REAL ESTATE RECORD

GUIDE TO BUYERS AND SELLERS OF REAL ESTATE

HOW TO DRAW A CONTRACT.

By
GEO. W. VAN SICLEN,
Counsellor-at-Law.

"When I can read my title clear."—*Dr. Watts.*

SECOND EDITION.

Together with

THE REAL PROPERTY LAW

of the State of New York, which takes effect October 1, 1896.

INDEXED.

THE REAL ESTATE RECORD AND BUILDERS' GUIDE,
Publishers.
14-16 Vesey Street, New York,
1896.

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PRINTED BY
THE RECORD AND GUIDE PRESS,
227 WILLIAM ST., N. Y.

PREFACE.

It is certainly pleasant to have one's publisher insist on a second edition. The three thousand copies of the first edition of this Handybook were some time ago exhausted. The Title Guarantee and Trust Company, of New York, which I planned and founded in 1883 upon the lines laid down herein, has grown, under other management than my own, from a capital of $500,000, to have a capital and surplus of about $4,500,000, and transacted in 1895-6 a business of over $20,000,000.

But few changes need to be made in the text of the book. The New York Court of Appeals has recently, May, 1896, differed from my views in regard to a quitclaim deed (see p. 31), and held in the case of Wilhelm vs. Wilken, that a purchaser by a quitclaim deed can be a bona fide purchaser for value without notice, and protected by the Recording Act.

In affirming this proposition the opinion of the Court which was prepared by Justice Gray, and in which all concurred, stated: "The practice of transferring title to real estate through quitclaim deeds has not been uncommon in this State, and, in the absence of any facts creating a suspicion as to the transaction of transfer, there is nothing especially significant in the use of such a mode of conveyance. The point is, what is effected by the deed; and where, as in the present case, the subject of the release and quitclaim is a certain particularly described property with all the appurtenances and all the estate, right, title and interest of the grantor, with the "habendum" to the grantee, her heirs and assigns forever, a conveyance of the real estate, within the meaning of the act, is evident. The terms of such a deed imply that Tallman professed to have an interest in the premises, which he could convey, and it is the duty of the Court to so construe a deed, purporting to convey land for a valuable consideration, as to give effect to the intentions of the parties, and to hold it to be a conveyance of the land."

I did not use to think so.

And it is, perhaps, not necessary to require a husband to join with his wife in executing a deed (see p. 22), in view of the statute authorizing a wife to make a will or sell her real estate without the consent of her husband; but until the husband's right by the curtesy is explicitly abolished by law, situations can arise in which a careful conveyancer may be in doubt as to whether there may not yet be a husband living who could claim a life estate in property his wife had conveyed.

Many of the reforms suggested and indicated in the first edi-

tion of this book, having been also independently suggested and urged by Mr. Dwight H. Olmstead, and by other able lawyers interested in the public welfare, have been adopted by the State Legislature, and short forms of deeds and mortgages have been legalized and encouraged, and the "Block system" adopted for New York City and Brooklyn for recording and indexing conveyances, etc., as against the parcel of property rather than the name of the grantor.

The methods of transferring ownership, and of mortgaging real estate can be still greatly simplified; it can be dealt in by the use of certificates like certificates of stock, or warehouse certificates; but the time has not yet come. In the meantime, however, since the first edition of this book appeared in 1885, several good statutes have been passed by the New York Legislature effecting great saving of labor and simplicity of plan in recording and indexing transfers of real estate. And finally in 1896, a Real Property Law has been passed, to take effect October 1, 1896, which is intended to embody all the statutory law of New York upon this subject. The commissioners for codification seem to have done their work well; it will take time, however, to prove it. That Code is printed as a necessary Appendix to this volume.

The passage of that law has rendered useless quite a number of notes and remarks intended for this second edition; but the Index to it appended hereto will be found worth the price of this book.

GEO. W. VAN SICLEN.

No. 132 Nassau street, New York, July 1, 1896.

REAL ESTATE RECORD

GUIDE TO

Buyers and Sellers of Real Estate.

When a man has decided to buy a house and lot, or a vacant lot, or a farm, the question arises, what shall he do to protect himself in making his written contract for the purchase?

For while occasionally men are found foolish enough to pay for their land first, and take their chances as to faults in the title turning up afterwards, very much as many plunge into matrimony, marrying in haste to repent at leisure, yet the opportunities for thorough investigation are so ample in the former venture, that few make it until they have taken time to investigate; and besides preparation usually has to be made for the payment of the price.

Take Time.—Assuming, then, that you will certainly not risk your money without having the title searched, take care first to allow yourself ample time for this before the date when you are to take your deed and pay your money. The customary time is thirty days; and the reasons why so long a time must be allowed, at least in large cities like New York, are these: In the first place the law says that the County Clerk and the Register shall have twenty days to make their returns to your searches after you put the latter in; and if you want your work done any sooner, of course you have to pay extra for it; for instance, if the lawful charge for the necessary official searches against your piece of property were twenty dollars for the County Clerk and thirty dollars for the Register, and you want them done in a week, you will have to pay fifty per cent. extra, that is ten dollars more to the County Clerk and fifteen dollars additional to the Register, to get them in that time; and very properly so, for to accomplish such an amount of labor, the careful official searchers have to work, to dig into the volumes of records, night and day. In the city of New York alone there were twelve thousand two hundred and sixty-two deeds recorded during the year 1884, conveying houses and lots for the expressed consideration of one hundred and eighty-two millions of dollars; three thousand and sixty-one of those deeds were for nominal considerations, and probably were only for the purpose of curing defects in titles, or by way of gift from parents to children, etc.; that would make nine thousand two hundred titles to be searched for the purchase of property; but besides this there were ten thousand two hundred

and thirty-nine mortgages recorded for one hundred eighteen millions of dollars; this would require nineteen thousand four hundred searches to be made by the corps of official searchers in each of the before mentioned offices, in the year of three hundred and five working days or over sixty-four searches for each day; and the deeds and mortgages in the Register's office alone are contained in thirty-seven hundred and sixty-five huge volumes, the indexes to which must be carefully examined; so you see you must give time for the searchers to do your work, and you ought very properly to pay them extra if you crowd them. But your lawyer who is to examine your title must have two or three days to look into the abstract and papers that you should get from the seller, so as to know just what official searches (and how few of them as possible), to have made; and then after the official searches have been made, and certified to by the Register and the County Clerk, and paid for, your lawyer must go to the books of record, and take down each volume cited, and examine it carefully to see exactly what the instrument contains, and that it makes your title good; and that takes several days more; so that thirty days are a proper and reasonable time for an ordinary title; if you are buying a big Westchester County farm of several hundred acres, made up of thirteen smaller farms, so that there are really thirteen titles to examine, thirty days are not long enough.

Examine the Title.—Many otherwise intelligent people do not understand at all the work which a real estate lawyer has to do, and to be fit for which he must study night and day all his life, and they think that if an official search from the County Clerk and Register only comes back showing a connected chain of deeds clear from judgments, that that is all they need to know, and that the lawyer has nothing to do.

This is one of the gravest of errors.

The Register, and County Clerk, don't know anything about the correctness of your title; this is not in the least to their discredit: they don't pretend to know; it is not their business, nor their duty, to know if the title be good; they only tell you at what pages in what books of record in their offices you can find deeds and mortgages, etc., which affect the piece of property you inquire about; but *how* the property is affected, you must find out for yourself, and for that you must employ a man learned in the law. It is really surprising how many otherwise able business men misunderstand this, to their great risk. I have in mind now the head of a large house, liberal, fair, but who frequently employs to "examine" the titles of the houses he buys, a very honest, worthy, intelligent real estate broker, who has bought and sold and inspected and insured many houses, and who is a very safe guide as to values, and who knows how to make out an official search, but who knows no more about the construction of wills, and deeds, and statutes, than a lawyer knows how to make a watch; but my friend employs him, and congratu-

tates himself from time to time that he is saving another hundred dollars.

A fair toast at a dinner of the Bar is "Here's to the man who draws his own will, and searches his own title!"

It is not to be wondered at that those who buy real estate, or who borrow on bond and mortgage, grumble and rebel at the bills which they have to pay their lawyers for the examination of title; but it is not the lawyers' fault: it is largely the result of circumstances which ought to be and can be corrected; which are partly due to the enormous growth of dealings in real estate; and which *must* soon be corrected, or it will be physically impossible to examine a title in a reasonable time in the City of New York.

Multiplication of Fees.—Not long ago the Jumel property was cut up into thirteen hundred and eighty-three pieces or parcels of real estate and sold at partition sale. There appear to have been about three hundred purchasers at that sale, and no doubt each buyer, before he paid his money, carefully employed a good lawyer to examine the title to the lot or plot that he had bought; so that probably three hundred lawyers each of them carefully examined and went through the same work—viz., the old deeds and mortgages and records affecting the whole property (for as it had never been cut up before, each had to examine the title of the whole, no matter how small his parcel), and each of them searched the same volumes of long lists of names and picked out from the thirty-five hundred volumes of deeds and mortgages then in the New York Register's office the same big, dusty volumes of writing, and lifted them down and looked them through—in all three hundred times the very same labor.

Evidently two hundred and ninety-nine times that labor was thrown away—done over and over again uselessly.

And the clients, those buyers, together paid three hundred fees to those lawyers, who each earned his money, but evidently two hundred and ninety-nine of those fees were for repetitions of the very same work.

By and by, twenty years from now, instead of only three hundred owners of those Jumel plots, the whole thirteen hundred and eighty-three lots will be sold and built upon, and thirteen hundred and eighty-three new purchasers will again pay thirteen hundred and eighty-three lawyers thirteen hundred and eighty-three fees for examining that same Jumel title, only the fees will be larger, for there will by that time (at the present rate of growth, and unless a remedy be soon applied) be fully ten thousand big folio volumes in the Hall of Records, and the whole thirteen hundred and eighty-three fees will be for mere repetitions of labor so far as the whole Jumel estate title down to 1883 is concerned, and will be practically wasted.

Fees.—Not only that, but to-day, in examining that title for a purchaser, his lawyer carefully puts in official searches. He makes

a requisition on the Register for all deeds, conveyances, mortgages and instruments in writing on record in his office affecting the parcel whose title he is examining, and, of course, the Register carefully returns on his search all the old deeds, &c., affecting the whole property—because they affect the parcel—and he charges and gets by law five cents for each year for each name searched against for deeds, and five cents per year per name for mortgages. Altogether, say $20 is paid by each purchaser for those searches; but as there were three hundred purchasers, and they put in three hundred searches, the Register gets three hundred times twenty dollars for the same work; and twenty years hence thirteen hundred and eighty-three purchasers will again pay the then Register thirteen hundred and eighty-three times twenty dollars, or more, for a search showing those very same facts.

But this is not all. In the County Clerk's office are the records of judgments and of notices of suits brought affecting the title to real estate (*lis pendens*, lawyers call them), and of mechanics' liens, certificates of Sheriffs' and Marshals' sales, insolvent assignments, general assignments, foreclosure by advertisement, appointment of receivers, appointment of trustees of absconding, concealed, non-resident or imprisoned debtors, and the law gives the County Clerk five cents per name per item per year for his search, and fifteen cents per year for judgments, or say, seventy-five cents for everything against one name for a year. So the three hundred purchasers of the Jumel property go to the County Clerk, and each pays him, say, twenty dollars for his search, being the same thing uselessly repeated and the money wasted two hundred and ninety-nine times; and twenty years hence it will all be paid over again thirteen hundred and eighty-three times.

But then the purchaser is not done. He must put in searches with the United States Commissioners and pay them about $1.25 for their return, and the Clerk of the United States District Court for bankruptcy and judgments charges $1, and the Clerk of the United States Circuit Court for judgments must be paid $1; and each of those items, like the Register's search, is to-day uselessly repeated, and the charges therefore wasted two hundred and ninety-nine times; and twenty years hence on that same property will be again thrown away thirteen hundred and eighty-three times.

This sort of thing is daily repeated, year in and year out, in this city, over the whole of its surface. The blocks of land bounded by Fifty-fourth and Fifty-seventh Streets and Sixth and Eighth Avenues were once all one estate, like the Jumel estate. They were the Cozine property. Between Eighty-third and One Hundred and Sixth Streets from Third to Eighth avenue, diagonally across, were the Harlem Commons. and many New Yorkers can remember when the Murray Hill farm, from Thirty-third Street to Thirty-eighth Street, and between Madison and Lexington Avenues, was cut up into lots and sold. And thus the whole surface of this city can be mapped

out—in fact is mapped out—into old farm titles, each of which is the original source of title of several hundred houses and lots.

And the same thing happens in regard to loans on bond and mortgage. Every man who thus lends money must have the title examined, and very properly so, and the borrower has to pay for it—the same old searches against the same old names—and pay the same old fees.

The tax which the real estate of New York city thus annually pays amounts to more than one per cent. of the real value of the property sold and mortgaged; and it is safe to say that at least one-half of this burden is the result of useless repetition, of the want of a good system in responsible hands, and is thrown away.

In the year 1882 there were nine thousand nine hundred and seventy-five deeds and ten thousand five hundred and sixty-six mortgages recorded in the office of the Register of the City and County of New York. Thus there were at least twenty thousand titles examined and twenty thousand fees paid and twenty thousand sets of searches paid for the same during that time. In 1883 it was nineteen thousand five hundred odd, and in 1884 over twenty-two thousand five hundred.

Bill.—The bill for examining title to the land for the new United States Post Office in Brooklyn was between $7,000 and $8,000; but an ordinary bill for examining the title and for a set of searches for a house and lot worth, say $10,000, will contain items something like these (they are taken from a bill lately rendered):

WILLIAM CLIENT,

To JOHN COUNSELLOR, Dr.,

To copy of abstract	$10 00
To affidavit of John Smith (that he is not the John Smith there is a judgment against)	1 00
To affidavit of William Jones	1 00
To paid for tax search	13 00
To paid for Register's search	22 45
To paid for County Clerk's search	34 15
To paid for United States District Court search	3 00
To paid for United States Circuit Court search	2 10
To paid for United States Loan Commissioners' search	2 50
To paid for certificate satisfaction Brown mortgage	25
To paid for recording deed	1 85

Copy of Abstract.—If we examine these items (and all who have had experience in the matter will say that this is a very moderate, small bill), we find "copy of abstract." Why should the old chain of title be copied over and over again? Why not have it done once for all and thoroughly by a responsible party, and filed where access can be had to it at any time?

Judgments.—Then look at the affidavits. Perhaps nine years ago a judgment of $100 was filed against some impecunious John Smith, and every time any one of the rest of the two columns of John Smiths listed in the New York City Directory, and every time each of his grantees has sold land or borrowed on mortgage, he has had to make a similar affidavit—that he is not the man against whom that judgment was obtained.

What's the use of the old judgment, anyway? If it was obtained against a man who had any property, it would have been long ago collected (unless he appealed from it, and then he must have given security); and who ever knew a judgment nine years old to be collected out of the debtor's real estate?

But our law ties up and tangles up the property for ten years, to the damage of everybody except the real debtor. If a judgment should be a lien on real estate at all, it should be for not more than one or two years.

Tax Search.—But to go back to our moderate bill—" tax search, $13." There certainly ought to be (and there is) a way of noting on the expensive tax maps and tax books of this city (for the cost of which every tax-payer has already paid his share) every unpaid tax or tax sale or assessment affecting each particular lot, so that it could be seen whether it were clear or not without paying a fee equal to the whole annual water rent of a medium-sized house. And this has been lately accomplished in the Brooklyn Tax Office by a system for ascertaining the arrears of taxes and assessments, on the plan of indices against localities and not against names.

Of the Register's fees we have already spoken. It is calculated that for the sixty thousand titles he received in 1882, 1883 and 1884 at least $300,000 in each year, besides $40,000 each year for recording the deeds and mortgages. Probably $300,000 were paid to the County Clerk for *his* searches during each of the same years.

While there are copyists and searchers to be paid in the Register's office, but fifty copyists at $10 a week each only take $26,000 a year off from the $340,000 receipts, and the searchers all receive " extras," as already explained. Heretofore no part of any of these fees has gone into the city treasury, but while the Legislature in 1884 put these officials upon salaries of $20,000 and $15,000 respectively, the foregoing fees must hereafter be paid to the city, which will be no relief to property owners.

New York city real estate must be a very good investment to stand such a steady drain.

The other charges for United States Courts and Commissioners' searches are for almost no work at all—for glancing over a half empty page of a small folio volume in each case. The money is thrown away, yet a careful lawyer must put in those searches to make sure that he has protected his client.

Wrong System.—Several causes have brought about or now contribute to this obviously wasteful, useless burden on real estate, but passing by all others, we may say that the root of all this trouble is the improper system of indexing deeds and mortgages by the names of the parties to them, which is cumbersome, expensive and full of errors in practice.

If you go to the Register's office now to find if Mr. James Robinson ever conveyed a certain lot on Broome street, you look through several huge volumes of indices which are backed by the letter R,

and every time you come across the name of James Robinson you note on your memorandum paper the book and page which you find written opposite his name; by the time you have gone through the indices you have notes of perhaps two hundred conveyances by a man of that name, but you don't know whether any one of them is a conveyance of the particular piece of property on Broome street; there is nothing (nor can there be anything under the present system of name indexing) to tell you what piece of property is conveyed by any one of those two hundred deeds that you have noted, so you go deliberately to work and lift down the two hundred big, dusty tomes and find the proper page in each, and read through the three or four pages of manuscript and see if the Broome street piece be described in any one of them.

And this is done over and over again, day in and day out, for all the names of all the prior owners of each of the twenty thousand parcels of land annually conveyed and mortgaged in this city. Evidently this is an enormous waste of labor and of expense, if only some way could be devised to prevent it. And again, the name you are looking for may have been misspelled or mispronounced and placed in the wrong column, and you may never find it at all, to your great loss; for there are so many names that the pages of each index book are ruled in columns right across both pages, and the name is put in a separate column, according to the first two letters which occur in the name, thus:

Date of Record.	Grantors.	Grantors.	Grantors.	Grantee.	Lib.	Page.
	L.a. L.b. L.d.	*L.e. L.f. L.h.*	** ** ** *L.z.*			
1883. Jan. 20.	Lamont, Edward, et al.			Daniel Jones.	1,591	393
1883. Jan. 21.	Lawrence, William, Rebecca.			James Marshall.	1,597	274
1883. Jan. 22.		Levy Abram.		William Denison.	1,598	89

If a reader of Irish extraction were dictating to a German copyist for entry in that index the name of Mr. Abram Levy and should pronounce it "Lavy," he might be correctly understood and the name be placed in the second, its proper column; but if a reader of either of the foregoing nationalities were dictating to an American

born citizen, the chances are that Mr. Levy's name would go out of place into the first column, and no searcher would ever find that he had made a conveyance, and our Court of Appeals has held that the index is no part of the record, so that if an instrument is recorded it is notice whether indexed or not.

Again under this name system of indices, the transposition of a single letter in the spelling of a name may throw the searcher off his line of search entirely; as in Greenbaum often spelled Gruenbaum, Miller for Mueller, etc. A case recently occurred in Brooklyn where a name was indexed as Fraendly instead of Traendly—and this for a mortgage. But the worst evil is in the enormous accumulation of written volumes (increasing at the rate of three hundred per year), through which the searcher must wade, entailing a labor almost physically impracticable; by 1895, when three thousand more volumes shall have been added, it will be impossible.

Not only does the examination of these books and indices involve great personal labor and occupy much valuable time, but every conscientious searcher of titles knows where and how the running of long indices is attended with great responsibility and risk to the searcher. A moment's abstraction of thought, a sudden interruption or other slight cause may render him liable to miss some conveyance or encumbrance seriously affecting the title under consideration. His continuous use of the indices is frequently prevented by the use of the books by others, when he must either wait his turn or break the order of his search by taking up other indices, thus adding another risk to this part of his duty.

Right System, Locality Index.—The minds of practical men in various places have been independently drawn to this problem, and it has been found by all or nearly all of them who have stated their conclusions that the remedy for this great evil is to arrange the indices of the conveyances and mortgages upon a geographical basis and not to have a name index at all (except for judgments); to make it a locality index, so that a buyer or lender desiring to know all the deeds and mortgages and liens on record affecting a particular house and lot can turn first to a ward and block map, something like the ward and block maps in the Tax Office of this city, and there identify by its number the parcel he is searching against, and then turn to another volume, which is numbered and paged to correspond with the ward and lot number, and find in that volume a page devoted to that particular lot, and on that page, in regular order, each occupying but one line, find every deed, mortgage and lien affecting that lot properly noted; then it will be a brief and easy labor to examine the specific volumes of records referred to.

If such a method be carefully, systematically and thoroughly carried out, what an enormous saving of time, labor and money!

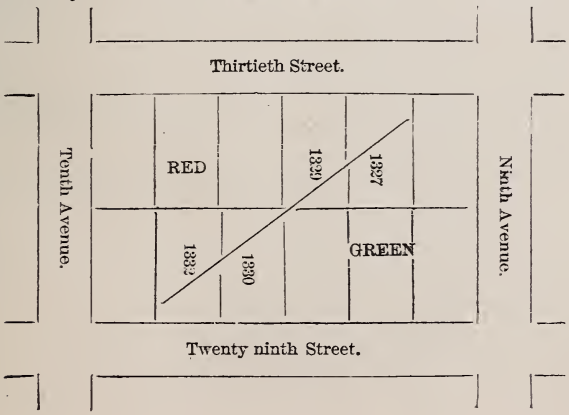
It is plain that the labor of keeping such a set of indices up with the daily records of deeds and mortgages is but a matter of detail.

For years the columns of THE RECORD AND GUIDE have weekly shown all the deeds and mortgages recorded in the Register's office the week before, and the same careful hand which furnishes those reports could continue to do so daily and clerks could daily assort the same and post each item in its proper locality.

The chief difficulty to be overcome is to systematically, accurately and thoroughly extract from the thirty-seven hundred and sixty-five volumes now in the Register's office the items that are now in that huge collection and which must be posted each to its proper place. This, however, is a matter merely of time, of patience, of system, of cost. It would have been well under way now and largely accomplished but for the opposition on the part of the Registers, who have refused to allow free access to the public records in their charge for fear that the fees of the office will be materially lessened, as indeed they will be, to the public benefit.

The matter of passing upon the correctness of the title to a piece of property, after all the deeds, mortgages and liens affecting it are known, is, of course, a very different thing, and requires the services of a studious, learned lawyer, as before explained. Many a will is void, for example, for trying to tie up property for more than the lives of two living people; but that would not appear on the searches; and scores of similar questions constantly arise; hence counsel will always be needed, and must be paid, for their study and labor and knowledge.

But the full abstract of title of the old farms and large estates and large pieces of property in the city can be made up and thoroughly worked out and written or printed and well bound and indexed and filed away once for all; and the block maps can be colored so as to show on what old farm and under which of those old abstracts the lots come, and thus save the useless repetition of the larger half of this labor, while the later part of the title (since the partition or other subdivision of the old farm or estate) can be worked out in the usual way. Take, for example, a block in the Twentieth Ward.



Let red be Mary Clark's estate, abstract No. 9, and green Clement C. Moore's estate, abstract No. 43.

Suppose that that block lay partly in two estates, the Mary Clarke and the Clement C. Moore; let us color red all in the former, and on the other side of the boundary line make the rest of the block in the Moore estate green; one glance of your eye and you know the title down to the partitions of those estates, the abstracts of which are at hand, filed by the Nos. 9 and 43. This method with abstracts has been for some time successfully used for the three or four square miles of the neighboring village of College Point, in its Savings Bank, the charge for the examination of the abstract title (exclusive of official searches and papers and recording) averaging about twenty-five to thirty dollars; the same system, or very similar, obtains in several large conveyancing offices in the city.

The keeping up the chain of titles for a lot becomes thus a mere matter of book-keeping; take for example lot number 1330 in the foregoing diagram; in the first place 1330 is the tax number on the city assessment rolls; in the next place the block between 29th and 30th streets, Ninth and Tenth avenues, like every block in the city, is given a number of its own on the "Guide-map," and a separate volume of its own, the number of the volume corresponding with the number of the Block on the Guide-map; there are seldom more than fifty-six lots, generally about thirty to forty, in any given city block, so that one hundred pages give ample room in each volume; then each lot is given one page, and the pages in the volume are numbered to correspond with the tax numbers of the lots, and are *not* numbered one, two, three, four, etc.; thus in the foregoing diagram the pages in the volume for that Block would be numbered 1327, 1329, 1330, 1332, etc.

An Index page with diagram begins each Block volume.

Turn to page 1330 for our example.

On the top line are written the location and dimensions of this particular lot.

On the next line. "Abstracts 9 and 23." This shows that we are to find the old farm titles of this lot (which have been so many times examined and approved), handsomely written out and filed away under those numbers, 9 and 23, the Mary Clarke and the Clement C. Moore abstracts.

The next line shows the first recorded deed, with its book and page in the Register's office; the next line the next deed or mortgage, somewhat in the following shape:

1330

201 E. 10th Av., 24.9x99.11x24.9x99.11.
Abstracts 9 and 23.
Mary Clarke to Wm. Jones, liber 93, p. 267.
C. C. Moore to Wm. Jones, liber 100, p. 8.
Wm. Jones to Edw. Lawrence, liber 180, p. 45.
Edw'd Lawrence to Wm. Jones, $10,000 Mtge., liber 127, p. 83.
Edw'd Lawrence to F. Wilkie, liber 201, p. 594.

The clerk who writes in the mortgages always uses red ink; this

shows those liens at a glance; when a mortgage is paid off and canceled of record, one black line ruled through that line of writing shows the fact distinctly the same thing should be done with the lien known as *lis pendens* which shows that there is a lawsuit about that particular lot), and with mechanics' liens.

Judgments, and all *general* liens allowed by law, will have to be entered in a separate volume indexed by the *names* of the parties affected.

Of course, it will occur that some deeds and mortgages will include and cover many lots, and will have to be "posted" on the page of each separate lot, just as the "Abstracts" are.

There are a number of little details about the particular lot, and the particular deed or mortgage or tax sale or lien, that can be noted on the particular line of the latter.

But each item affecting the title has its own line.

Assuming that something is done or occurs once every five years to affect a lot, twenty lines would show the record of a hundred years, which carries us back to the time when nearly all of the present City of New York was in farms; (I myself remember walking with my father up to the country at Fourteenth Street and Broadway); and a fair ledger page contains fifty to sixty lines, so the account of a lot once begun will last quite awhile before it need be simply continued on a subsequent page.

Now when a buyer or a lender, or his lawyer, desires a chain of title, let the searcher look at the Guide-map (which he will soon know by heart), turn to the block volume, turn to the page having the tax number, and in half an hour copy and verify the whole chain of title; then examine the names in the judgment dockets, and the work is done.

In a new country like one of our Western States or Territories, or like New Zealand, where very lately the title to the land originated in a patent from the government, it is a comparatively easy matter for the deeds and mortgages and judgments to be very soon systematically arranged so that the government itself, for a small fee, can promptly issue a certificate of all deeds, &c., affecting the title to a lot; and not only that, but as the title so recently came from the government, and such few and simple rights have intervened, the government itself can also guarantee the title, so that the chain of title can be kept on the page of a ledger, and guaranteed certificates can be issued to the owners, who can sell or mortgage the property by simple transfer of the certificates, as in the case of a warehouse receipt, from hand to hand, a new certificate being obtained from the Land Office for a small fee. But it is not practicable to apply this guarantee in this way in this old city; for in the many transfers that have taken place there have crept in rights of aliens and of infants, and of lunatics, and disputes over wills, and varieties of other claims which would make it unsafe for the city to pledge its credit and its property and to risk guaranteeing all the titles of all the

houses and lots in its limits, especially as the safety of its guarantee would depend on the correctness of examinations which would be made by lawyers who would necessarily be politicians, unused to the studious ways and sedate habits and careful, thoughtful methods of counsel accustomed to examining titles. Besides, many titles are in dispute and the city could not guarantee them, nor could any law be constitutionally passed which should injure the vested rights of many claimants by attempting to take away or annul their claims, no matter how convenient it might be to the general public.

Any systematized effort to remove the trammels which now impede the transfer of real property must depend upon the accuracy and conscientious fidelity with which details are carried out, for the confidence it would deserve and receive at the hands of the public. The practical difficulties are great and can only be overcome by scrupulous performance of duty on the part of those intrusted with the execution of details. The utmost care would have to be exercised in the selection of those who abstracted from the records and of those who verified the work. No principle but that of competence and fidelity could prevail in the selection of the workers without disaster coming upon the result of their labor.

The practical way to carry out such a system is to create special corporations as trust companies, with sufficient capital, with power to guarantee the titles to real estate, and with the right to make all searches and copies of records, abstracts, indices, maps, &c., that they may need for such purposes. This renders possible the existence of combinations of experienced men, of the highest reputation for character and ability, who will by great labor and expense and by the employment of systematic methods do the work once and for all, and preserve the result of this work in available form for future use.

It is obvious that such companies would, for their own protection, take the utmost pains to secure the services of those who have had the greatest experience and who have shown the highest degree of skill in the successful conduct of similar work. The labor to be performed is immense, and it requires legal knowledge and ability of the highest order. The most perfect system and the most thorough accuracy and reliability in every detail are absolutely essential. If such a task should be managed as a political job it could only result in a colossal failure and make matters much worse than they are now.

Companies of the character alluded to are in successful operation in Baltimore, Boston, Washington, Louisville and Philadelphia.

The labor which here requires weeks is, in these other cities, the work of hours. The prices charged are uniform and moderate.

The guarantees of such companies protect purchasers of property and mortgagees against risks which, though remote, always attend real estate transactions. The most experienced lawyer may err,

especially where the law is undetermined, and fraud as an element of danger increases with the growth of the city, though the nature of such a company's work should render the perpetration of successful fraud more difficult than at present. When a purchaser loses by reason of error in an official certificate of search, suit against the official leads to uncertain expense and vexation. A company guaranteeing its searches should and would pay such losses on notice given, be subrogated to the rights of the insured, and conduct litigation in his stead.

With a guarantee policy of corporation of sufficient capital, whose directors and stockholders should be the best lawyers and most conservative business men in this city, the owner of a piece of property here could in a day turn it into money or obtain in the same time a loan upon it on bond and mortgage, or get money from his bank upon his own note without an indorser, with his mortgage and guarantee policy as collateral, and real estate would be relieved from the larger part of the burden of expense and delay which now trammel its free use as capital.

The proper corporation to do this in New York city is our new Real Estate Exchange.

Title Reform Two Hundred Years Ago.—Andrew Yarranton, a shrewd Englishman, published over two hundred years ago a book with the following extensive title; "England's Improvement by Sea and Land: To Outdo the Dutch without Fighting; To Pay Debts without Moneys; To Set at Work the Poor of England with the Growth of Our Own Lands; To prevent Unnecessary Law Suits with the Benefits of a Voluntary Register; Directions where Vast Quantities of Timber are to be had for the Building of Ships; With the Advantage of Making the Great Rivers of England Navigable; Rules to prevent Fires in London and other Great Cities; With Directions how the several Companies of Handicraftsmen in London may have Cheap Meat and Drink. By Andrew Yarranton, Gent., London; Printed for the Author, by Roger L'Estrange, 1677."

Andrew had been sent abroad by eleven private gentlemen, who paid from their own pockets his expenses and those of an interpreter, that he might study and report upon all trades, manufactures and improvements which he should deem it advantageous to introduce into England. This book was written on his return. The following extract gives his views on the subject of Land Title Reform.

"Now, I will demonstrate to all men unbiassed the truth of what I assert, and show them the condition the gentlemen and people of England are in at this day, and also the condition the Dutch are in at this day, in all their provinces. Let a gentleman now in England, that hath a thousand pounds a year in land, that owes four thousand pounds, come to a money scrivenor and desire four thousand pounds to be lent on all his land, and produce his writings, and the estate hath been in the family two hundred years,

I know at this day the answer will he, that by the law of England, as it is now practiced, no man can know a title by writings, there being so many ways to encumber land privately. And therefore, the answer commonly is, 'Bring us security for the covenants, and we will lend you the moneys.' The gentleman gets such friends as he can procure to be bound for his covenants, whom, if they accept, then the procurator and continuator have their game to play; but if he bring not such security as they like, he goeth without his four thousand pounds, which is a sad and lamentable case, he having lands worth a thousand pounds a year; and now he is put to his shifts, his creditors come upon him, the charge of law-suits comes on, all his affairs are distracted, his sons and daughters want money to set them into the world. At last it is possible he gets two thousand pounds a piece of two several persons, of one at York, and of the other at London, and mortgages all his lands to each man. This continues private for some years; the while the gentleman strives what he can to be honest, and prepare moneys to pay off one of the mortgages.

But it commonly falls out otherwise, either through 'bad times' or decay to tenants, great taxes, or the eldest son matching contrary to his father's will, or oftentimes it is worse—he is so debauched no one will match with him. Now the gentleman's miseries comes on, and what must he then do? For the persons that have the land mortgaged will not stay, because by this time it is discovered the land is twice mortgaged. I tell you, the lawyers' harvest is now come on, and the estate torn to pieces, and the gentleman, his wife and family, and, it may be, creditors, too, undone. For seeing all is in danger to be gone, the friends of the wife trump up a former title to the two mortgages, and fence to get all the estate that sheriff, bayliffs, solicitors and lawyers leave, to be to the uses intended or pretended in the private settlement. But you will ask me what the poor gentleman shall do to secure his person? I will tell you what some have done, and many more, I know, must do,—even turn over either to the Fleet or Bench. O pity and sin that it should be so in brave England! First, pity that a poor gentleman cannot have moneys at such interest upon his lands as the law directs, to pay his just debts, and for the good and comfort of his family. Secondly, it is a sin that a gentleman of a thousand pounds a-year should be the occasion of ruining so many families, as he does, by putting them to such vexatious suits for their moneys lent, and it may be at last lose all."

"In this posture, as you see, are many poor men in England, which cannot borrow four thousand pounds of a thousand pounds a-year land. I pray let us see what posture a Dutchman stands in, that hath one hundred pounds a year, and wants four thousand pounds."

"Now, I am a Dutchman, and I have one hundred pounds a year in the province of West Friezland, near Groningen, and I come to

the bank at Amsterdam, and there tender a particular of my lands, and how tenanted, being one hundred pounds a year in West Friezland, and desire them to lend me four thousand pounds, and I will mortgage my land for it. The answer will be, I will send by the post to the register of Groningen your particular, and at the return of the post you shall have your answer. The register of Groningen sends answer, it is my land and tenanted according to the particular. There is no more words, but tell out your moneys."

"Observe, all you that read this, and tell to your children this strange thing, *that paper in Holland is equal with moneys in England.* I refuse the moneys, I tell him I do not want moneys, I want credit, and having one son at Venice, one at Noremburg, one at Hamburg and one at Dantzick, where banks are, I desire four tickets of credit, each of them for a thousand pounds, with letters of advice directed to each of my sons, which is immediately done, and I mortgage my lands at three in the hundred. Reader, I pray observe, that every acre of land in the seven provinces trades all the world over, and it is as good as ready money; but in England a poor gentleman cannot take up four thousand pounds upon his land at six in the hundred interest, although he would mortgage a thousand pounds a year for it. No, and many gentlemen at this day, of five hundred pounds a year in land, cannot have credit to live at a twelve-penny ordinary. If this be so, it is very clear and evident that a man with one hundred pounds a year in Holland, *so convenienced as their titles are*, and at the paying but three in the hundred interest for the moneys lent, may sooner raise three families, than a gentleman in England can raise one or preserve the family in being, for the reasons already given."

Our New York system seems to be the child of the Holland system of our Dutch ancestors; but it has grown to such dimensions here that it must be reformed again.

But at present, and until the recommendations that may be made by the lately appointed able Land Transfer Commission shall be enacted into laws, we must take facts as we find them: many houses and lots will be bought and sold and loaned upon before the reform comes, and in the meantime you want to know what to do now.

Thirty Days Time.—In the first place, then, make the seller allow you thirty days if possible, certainly twenty, before you are to take the deed. Though it has lately been decided by the Supreme Court in New York that a buyer who had contracted on June 23d to complete his purchase on July 1st, and who on the latter day requested an adjournment because he had been unable to procure a search of the title to the property, which adjournment was refused by the seller, was entitled to a reasonable extension of time, where the only damage to the seller was loss of interest; and in this case the seller was ordered to give a deed (specific performance was decreed), the buyer having obtained a search and offered to pay the money in the latter part of July.

Seller to Furnish Abstract.—In the next place see that it is written in the contract that the seller will furnish you with an abstract of title and official searches, or copies of accessible official searches, down to a certain date—usually the date when *he* bought it, or, if he put a mortgage on it since, then to the date of such mortgage. This will save your lawyer considerable labor, and he will not have to charge you so much for the examination; the labor of digging out a chain of title without any former abstract to serve as a guide or clue, is indeed very great. In England the rule is that the seller's lawyer prepares the abstract at the former's expense, and the purchaser's lawyer examines the abstract, with the deeds, at the purchaser's expense; but that is not the rule here, and although it is customary and usual for the seller to hand over his abstract of title and other papers to you, you can't make him do so, unless it is written in your contract. If he agrees to do it, and fails, then you can make him foot the bill.

I said that you will have it *written in your contract* that you shall receive such an abstract.

The Contract must be Written.—You know of course, that to be binding, a bargain for the purchase or sale of real estate *must* be in writing signed by the parties to be bound. Printing is writing. So your contract may be partly a printed form, and partly written.

There are cases, however, in which the contract for the sale and purchase of real estate need not be in writing; I refer to those cases where the contract is already executed on one side; for instance, if you agree to give me a deed of a certain house for five thousand dollars, and I go into possession of the house, you can make me pay you the money. But a grave drawback to an oral executed contract is, that terms and conditions that are desirable are not thought of at the time of making it (and you cannot make them up and put them in afterwards).

But you are going to have a written contract.

What a Contract is.—A letter in terms repudiating liability, but admitting the making of the contract, the letter being signed by the party to be charged, has been received as a sufficient memorandum in writing. And the terms of the bargain may be gathered from two or more separate papers if the signed contract contains such reference to the other papers as to make them part of the former; but they must be mentioned in the contract; the connection between unsigned papers and the contract cannot be made by parol evidence that they were intended to be read together or by evidence of facts and circumstances from which such intention may be inferred. It may be stated generally that the contract must state expressly the subject of sale, the terms, and the parties, with such certainty as to furnish evidence of a complete agreement.

Contract by Letter.—The contract might be the result of correspondence by letters. If I write to you that I will sell you my land on certain terms and you send me another letter accepting the

terms proposed the contract is complete the moment that you put your letter to me in the postoffice. So it would be if the letters were written by our duly authorized agents. These letters must be definite; if I had simply written to you asking if you are the owner of certain real estate and what your price is, and you answer that you are the owner and state the price at which you hold it, that would not be an offer on your part to sell it to me; I could not clinch it by writing back to you that I take the land at your price.

And if some one has made you an offer through his agent to buy your land, and you write to the agent accepting the offer and do not in your letter request him to have your acceptance delivered to his principal, unless you can prove that the latter had knowledge of it, the agent's letter and yours together would not make a contract.

Date.—To begin with, you will date your contract. But if from oversight the date of the agreement should be left out, that will not invalidate it, it will take effect from the date of its actual delivery.

Escrow.—Sometimes, however, the buyer determines to buy, and the contract is signed, at a time when the buyer has no money about him, and thereupon for that or for some other good reason the contract is left "*in escrow*," as it is termed, that is, in the hands of some trusted third party to be delivered on the payment into his hands within a certain time of a certain amount of money, or on the doing of some certain act agreed upon. And as the contract will not take effect until its delivery, it is better to have it dated.

Cancellation of Contract.—A contract can be extinguished, by agreement of both parties, by simply tearing it up.

It does not need a written cancellation or agreement that it be deemed cancelled, nor need the wife of a buyer join in or sign a cancellation of *a contract*.

A wife has no dower in a contract for the purchase of land.

Cancellation of Deed.—But this is not the case if a *deed* has been executed and delivered, although it has never been recorded; the right of dower of the wife of the grantee at once attaches to the land in that case, whether she knows anything about it or not; neither can the title of the buyer, if a single man, be extinguished by simply tearing up the deed, even with the consent of the seller; the title to land can only be conveyed or given up by a deed duly signed and executed, and a grave mistake is often made in the utmost good faith by attempting to end the matter by just destroying the deed.

Parties.—Seldom does any question arise as to the parties to such a contract. Of course an infant under twenty-one can not sell land without a guardian appointed for that purpose by the court, and an order of the court that such land be sold for the infant's benefit; nor can a seller rely upon a young man of twenty say, as a buyer, even if he pay his money and take his deed, for he may repudiate his bargain any time before he is twenty-two, and deed the land back, and get his money. Of course a corporation can sell land that it

owns; the general view is that a corporation can not give a full covenant warrantee deed, but only a deed of bargain and sale, or a quit-claim, on the ground that the covenants of warranty would be *ultra vires* (or beyond the powers of the corporation): but my own view is opposed to this, and if the corporation will give you such a deed, you take it; the only risk you run is that some time in the future, if you should have trouble with your title, say your quiet enjoyment interfered with, or some deed of further assurance be required, the corporation may have ceased to exist and you would have no one to enforce your claim against; but you would be no worse off then than if you had a simple deed of bargain and sale, without any covenants.

Referees appointed by the court, or Sheriffs, in foreclosure or partition suits, are very often the sellers of property, and the parties of the first part in contracts. In such cases the terms of sale are usually embodied in the decree or judgment that appoints the referee; but if you are going to buy a piece of property at such a sale you ought to go, or rather send your lawyer, beforehand and examine the decree, and the terms of sale that the referee intends to use, for you will not be able to understand them when they are read in the babel of the real estate exchange or auction room, at the sale.

Referee to see that taxes are paid.—The referee, or Sheriff, is personally bound by law to see that all taxes and assessments, liens on such property, are paid from the proceeds of the sale; if he overlooks it you can make him pay them out of his own pocket.

Competent Parties.—There must be competent existing parties, but they need not be expressly named, though where there is nothing in the contract itself nor in the nature of the transaction which shows who are the parties, such a contract would be void for uncertainty; though it is not necessary in every case that the party to whom the deed is to be made should be distinctly ascertained at the time of the contract; for example a contract might be made to convey land to a corporation not yet formed, which would not be void for want of a grantee, if a good consideration were paid for the contract, as the corporation might be formed and be in existence before the date of the delivery of the deed; and the heirs of a vendor, even though they should be infants, and although not named in the contract, may be made to fulfil the contract to the extent of the estate that descends to them; in one case, where the seller died before delivery of the deed and left a lunatic child as his heir at law the court directed the committee of that lunatic child to execute the necessary conveyance.

Assignee of Contract.—The contract may be assigned. The assignee can stand in no better position than the original vendee, and takes it subject to all equitable rights, between his assignor and the other party to the contract, bound by any understanding or bargain outside of, or in addition to the contract; but the assignee of the buyer under such a contract is not personally bound to pay

the balance of the purchase money that may be due; unless he makes an express agreement so to do, or unless such an agreement on his part can be implied, the seller cannot sue *him* for such balance of the purchase money.

Oral Authority to Agent.—An oral authority to an agent to make a contract relative to the sale of lands would be good, and not within the statute of frauds; but the execution of a deed by an agent would not be good unless authorized by a power of attorney under seal (you could tell another man to sign your name right in your presence and that would be a good signature by you).

Auctioneer.—A mere oral authority is all that an auctioneer needs to sell lands, but not to make a deed of them. As soon as a sale is perfected the auctioneer's agency ceases. A sale by him (at auction, of course), is within the statute of frauds and requires a memorandum of it in writing in order to bind both parties, but this memorandum made and signed by the auctioneer is sufficient; he acts as the agent of the buyer as well as that of the seller; but he must make that memorandum and sign it at the time of the sale, and before those proceedings are terminated, or the purchaser will not be bound.

By-bidding.—The employment of puffers or by-bidders to run up the property by sham bids is against public policy and avoids an auction sale; a buyer at such a sale may be delivered from his purchase. But some courts have held that if persons were employed to bid up to a certain sum in order to avoid a sacrifice of the property, and then the price was afterwards raised by real bidders, the sale will be sustained; and out in Texas, merely for a person to bid in for the owner does not necessarily vitiate an auction sale, so long as he does not intend to raise the price beyond a fair value; and it has been decided there that whether the by-bidders were employed in good faith to prevent a sacrifice, or simply to raise the price by a pretended competition, is a question for the jury to pass upon in each case.

Lunatic Party.—If you should unfortunately be drawn into making a contract with a lunatic of course you cannot hold him to it, but mere weakness of understanding on his part would not invalidate it, so long as he has memory and judgment to a moderate extent and no fraud is shown; it is useless to get a man to make a contract while he is intoxicated and thereby deprived of his reason, because he can have it set aside.

Signature by Agent.—The *proper* way for an agent to sign a contract on behalf of his principal is of course, "the principal by the agent," "John Smith, by Wm. Jones, agent;" still should it be signed "Wm. Jones for John Smith" that would bind the principal, provided the contract on its face purported to be made by the principal; and where the agency is disclosed and the contract is within the agent's authority, the latter will not be personally bound, unless upon clear and explicit evidence of an inten-

tion so to bind him; if an agent who had no authority should risk signing a contract on behalf of a principal, the former would be personally bound to carry out the contract; this rule, however, does not extend to a purchase at auction where the auctioneer, carrying out his duty as such, signs the memorandum of the sale and purchase as the agent of the buyer, as well as of the seller.

Signature by Trustee.—If a seller who is a trustee for others should be described in a contract simply as "Trustee" or "Trustee, etc.," without stating for whom, he would be personally liable; so take care to put in the whole of your title as trustee: this is a precaution often neglected, generally from laziness, because it is too much trouble to look up the exact words of description of your position or legal name, the seller not being quite certain whether he is "executor of the estate of James Henderson, deceased," or "trustee under the last will and testament of James Henderson, deceased," or what.

Signature by Trustee of a Corporation.—But it will not do to make a contract on behalf of a corporation and then sign it with your name as trustee of such corporation, you would then be personally liable; it must be signed with the name of the corporation by So and So, trustee, or director, or president; if you sign it in the preceding way, as we have stated before, you will be personally liable.

Of course a person merely *named* in a written agreement is not liable if he has not signed it, unless there be other evidence of his promise.

Pretended Owner.—If you contract to purchase from a person who turns out to be only a pretended owner, you can not be compelled to take your title from some one else, a third person, the real owner.

Assumed Agency—Bond and Mortgage.—If you sell to a purchaser under a contract in which he agrees to assume and pay a mortgage on the premises as part of the consideration, or if he agrees to give a purchase money mortgage for the same, and then you give him a deed in which he assumes the existing mortgage, or upon the delivery of which he gives you his own purchase money bond and mortgage, in pursuance of that contract, and you afterwards find that he was acting for some one else, some rich man, his undisclosed principal, it will be of no use for you to sue this third party on the covenants in that contract, should the one to whom you gave the deed afterwards fail to pay the mortgage.

Husband to join.—A married woman in New York can contract to sell her land, or can buy, without the consent of her husband; but I doubt very much whether estate by the curtesy has been abolished; I think that to accomplish that would require an express statute, and that it has not been destroyed by implication any more than an estate by the entirety has, by the Married Women's Acts;

and I should require a husband to join in the deed of his wife's land to release his right by the curtesy, just the same as I would require the wife to join in a deed of her husband to release her right of dower.

Curtesy.—Right by the curtesy is the common law right of a husband to take possession of all his wife's land should she die first, and receive and spend all the rents for his own benefit during his lifetime, *provided they ever had a child born to them alive* (no matter whether it continued to live or not).

Dower.—Right of dower is the right of the wife to one-third of the rents of the husband's houses and lands or to have one-third of his houses and lands set apart for her use, so long as she lives, after he is dead, no matter whether they ever had any children or not. It is curious how many well-informed people think that a widow's dower is the absolute ownership of one-third of her husband's real estate, with the right to sell it, or to do as she has a mind to with it; whereas her right is only a life estate, so long as she shall live.

However, it is but seldom that it is written in a contract that a wife shall sign the deed to release her right of dower, or a husband to release his right by the curtesy; because the contract usually provides that a deed shall be given free from all incumbrances, and the wife must join in order to comply with that. In view of the differences of opinion about the state of the law as to curtesy, I should say, require the careful insertion in the contract, where a married woman is the seller, of an agreement on her part that her husband shall join in the deed to bar his right by the curtesy, and if she would not agree to that, especially if because she could not control him, it would then be a grave cause for the buyer refusing to make the contract.

Consideration.—The question as to what is a good consideration for a contract is too large to be gone into here. An agreement for the sale of land requires a good and valid consideration, the same as any other contract; for example, if you agree to give the refusal of your house and lot to another party, but the latter does not agree to take the house and lot, and there is no promise on his part, nor no money or other valuable thing given, the whole agreement would be void for want of consideration; of course you could not hold him, but also he could not hold you. Marriage is a good consideration; so that if you promise a lady that you will give her your Murray Hill residence if she will marry you, and she accepts and carries out her part of the bargain, you can be made to keep your part of it.

But a contract to convey real estate in consideration of love and affection, as to a son or other relative, cannot be enforced, although if a deed be actually delivered for such a reason that would be a valid consideration to uphold the conveyance, unless the latter has been made to defraud creditors.

As to the consideration *for the agreement* to sell and purchase a piece of property, contracts usually are in one of two forms:

In one, the consideration (*for the contract*, mind) is directly expressed and paid at the time of delivery of the contract, thus "the said party of the first part" (the seller), "for and in consideration of the sum of (say) five hundred dollars to him in hand paid, has contracted and agreed to sell" to the buyer a certain piece of property for (say) ten thousand dollars. Here the consideration *for the contract* is five hundred dollars, and the consideration to be paid *for the property* ten thousand dollars. It is usual under this form of contract, however, when it comes to specifying how the consideration for the land (the ten thousand dollars) shall be paid, to provide "payable as follows: The sum of five hundred dollars paid as aforesaid at the time of the delivery of this agreement to be allowed thereon; the sum of (say) forty-five hundred dollars upon the delivery of the deed, and the balance (say) five thousand dollars in a purchase money mortgage, etc.;" so that the said five hundred dollars expressed as the consideration of the contract ultimately becomes a part of the consideration for the property. This form is inaccurate and illogical.

The other way is to regard the mutual covenants, that of the seller to give deed, and of the buyer to pay, as the mutual considerations which support the contract. This is correct both in fact and in principle. This form is worded thus: "The party of the first part, in consideration of the sum of ten thousand dollars, to be fully paid as hereinafter mentioned, hereby agrees to sell unto the party of the second part" such a piece of property; "and the said party of the second part hereby agrees to purchase said premises at the said consideration of ten thousand dollars, and to pay the same as follows: five thousand dollars on the delivery of the deed, and five thousand dollars in a purchase money bond and mortgage, etc."

In some states, for example New York and New Hampshire, the courts require the consideration to be expressed in writing as part of the agreement, while in others, for instance Massachusetts and Missouri, it is enough if the agreement be in writing though the consideration be not expressed. At law, as we have said before, a parol contract for the sale of land is void notwithstanding possession and improvements by the purchaser; but it has long been the settled doctrine in equity that such a contract will, if executed by the party seeking relief, as for example if he has made full payment, be specifically enforced; only partial payment of the purchase money is not of itself usually regarded as a sufficient part performance to take the contract out of the statute.

Description—We must now consider the *description of the premises* in your contract.

This cannot be too clear and accurate. This is a part very apt to be slighted, usually because the printed blanks do not leave

room enough to write all that ought to be written; if it be only a city lot of four sides that is to be conveyed, it needs but little space; but if a farm, with many courses, and various rights of way or easements, or a house or factory, with movable fixtures to be enumerated, remember that the deed must follow the contract, and that if you begin to enumerate and describe everything, whatever you omit will not go with the rest as a matter of course; therefore, take more care with the description. It is not essential that the description of a property should have such particular identification as to render it entirely needless to call in outside evidence to determine what property was contracted to be sold, but the terms must be sufficient to comprehend it, so that with the assistance of outside evidence, the description without being contradicted or added to can be connected with and applied to the very property intended to the exclusion of all other property.

What "Land" Means.—The word land is broad in its meaning and includes growing grass and standing trees. A contract for the sale of standing timber is therefore a contract for the sale of an interest in land, and must be written; so is one for the sale of growing crops; but if the standing trees are sold with the intention of their being immediately cut down, this contract need not be in writing; and the same has been held with regard to a crop of peaches, the buyer to gather and remove the peaches as they ripen; so may hops upon the vine, and hop roots be sold without a written contract, although at the time the bargain was made the roots were in the ground. But in England the sale of a right to shoot over land, and to take away part of the game killed, comes within the statute of frauds, and must be in writing; and so must a sale of coal and the right to take coal; and a permission to flow land with water as for a mill pond; and the same has been held in respect to mining claims; but the sale of shares in a mining company is not a sale of land or of an interest in land. A contract for the sale of improvements on land, such as houses, has been held in some states to be a sale of personal property, and not within the statute.

Pointing out Boundaries.—Where the seller undertakes to point out to the buyer the boundaries of a piece of land he does so at his peril.

Allowance for Deficiency in Quantity.—But if the buyer can obtain substantially what he bargained for, and the value of any deficiency can be reasonably ascertained, he can be forced to take title; the general rule is that he shall have what the seller could give with a deduction for the quantity that the land falls short. And if the title to part of the premises fails, the buyer may claim performance as to the remainder with a deduction for the deficiency; but if the term "more or less" is used and there should be but a small variation in the dimensions or quantity, no change in the consideration can be claimed by either party; while if the vari-

ation is considerable, an equitable allowance should be made to the one entitled to it; and if you pay part of the purchase money and give a mortgage for the balance, you will not be relieved against a mortgage on the mere ground of a defect of title, where there was no fraud in the sale, and you have not been turned out; but you can get your remedy at law on the covenants in your deed.

The real test as to the materiality of a deficiency in the quantity of land contracted to be conveyed is, would the buyer have entered into the contract if the error or falsity had been known. The buyer is not bound to know that the description of the premises in the contract does not include all the land that the seller represented it to contain, and any deceptive assertions and false representations made by the seller upon that point would justify an inference of fraud and enable the buyer to have the contract set aside.

Description.—A broker may give you a diagram which specifies supposed dimensions of the property, besides designating it by street and number, but if he had no authority from the seller to give the dimensions and you should afterwards take a contract which described the premises only by the street and number, without any dimensions (as contracts often do) you will be bound to take the deed of the property as it stands, in accordance with the contract, and cannot claim the dimensions given you by the broker.

A question that quite often arises is whether a purchaser will be bound to complete his contract if he finds somewhere in the chain of title an error like this, "beginning at a certain point and running southeasterly" when it ought to say "southwesterly," which of course would locate the property in an entirely different place from the one intended by the buyer; but this is always to be decided by reading the entire description as a whole, and if the intention to convey the premises in question is apparent the purchaser will not be relieved.

He would be, however, where he had taken a contract for a store and premises which had been offered to him by the seller as they appeared with water pipes and gas pipes and gas fixtures in them, and then the pipes and fixtures should be removed afterwards, although they were taken away by a tenant who had the right to do so, and the seller when he made his contract did not know that his tenant had any such right.

Buyer must Agree to Buy.—Another odd thing that often happens when a contract is drawn without the aid of an experienced lawyer or real estate broker is that while it is carefully written that the seller agrees to sell, and so *he* is bound, it is often forgotten, or taken as a matter of course, and omitted to state expressly and separately that the buyer agrees to buy and to pay for, and to pay on the special terms agreed on, so that frequently contracts are seen where the buyer is not bound. This is a one-sided sort of contract, not always to be safely indulged in by the seller.

An apt commentary upon these views is the opinion of Judge O'Gorman, of the New York Superior Court, in the suit of Isaac E. Wright against Herman Mischo, decided March 12, 1885, since the manuscript of the foregoing was written. This was a motion on the part of plaintiff for a new trial on the minutes, the complaint having been dismissed at the close of the case on the trial, all the evidence on both sides having been received.

O'GORMAN, J.—The action is brought for the recovery of $4,000, as damages resulting from the breach by the defendant of a contract alleged to have been made by him in March, 1883, to purchase from the plaintiff certain real property in this city. The burden of proving this contract by a preponderance of evidence was on the plaintiff.

The plaintiff testified that, after some preliminary negotiation between him and the defendant, an interview took place on or about March 21, 1883, at the store of defendant, who dealt in furs.

Defendant said he would give plaintiff for the property $24,000, and $500 in furs, to which the plaintiff answered "The property is yours." Defendant said, "I want to know that for sure, because if I don't get this propery I want other property I am looking at." Plaintiff said, "It is yours. I will draw you a contract, a receipt, and you pay me some money." He (defendant) says, "Very well, I have not much money in the safe." I said, "All right, $50 will do."

"Defendant then instructed his bookkeeper to give me (plaintiff) fifty dollars and to draw a receipt. The bookkeeper commenced drawing the receipt and turned to me (plaintiff) and said, 'Mr. Wright, you know more about this property than I do; you know the location of it; you better draw the receipt yourself;' then I took the pen and drew a receipt."

This document was thereupon signed by the plaintiff and left with the defendant, and plaintiff received the fifty dollars in bills. It was not produced at the trial by the defendant, who stated that it was lost, and plaintiff testified as to its contents, using, to refresh his memory, a copy which he made of the document a few days after it had been signed by him.

The following is a copy:

"New York, Mar 21, 1883. Received from Herman Mischo the sum of $50 on account of purchase of property known as 411 and 413 East One Hundred and Fifteenth street for the sum of $24,500, as follows: Subject to $16,000 now a lien on said property, $8,000 in cash and $500 in furs. The property to be free and clear of all encumberances, except as above mentioned. Deed to be given on the 2d of April, 1883."

This paper, as plaintiff testified, was read over to the defendant. This, however, defendant denies. Plaintiff continuing his testimony further says: "I was to have a contract drawn next morning, and Mr. Mischo was to call at my office and pay $950 additional. I read the contract over to him. He says: 'Mr. Wright, they are apparently all correct; I do not see anything there but what I agree to, but I have always done business in such a way that I never sign any papers without my attorney seeing them.' I said to him: 'I want the money to-day.' He said: 'You sign this contract and leave it here with Mr. Knapp (plaintiff's clerk), and before three o'clock, if my attorney does not come from Brooklyn, I will show it to another attorney and be here in time for banking hours with the check for $950." The contract was thereupon signed by plaintiff and left with the clerk.

Defendant did not return that day, and wrote a letter to plaintiff declining to proceed further in the transaction. This letter was answered on the part of the plaintiff, stating that defendant had bought the property and held plaintiff's receipt which debarred plaintiff from selling it to anyone else, whereupon defendant again wrote to plaintiff inclosing plaintiff's signature which had been cut from the receipt. Plaintiff thereupon took steps to sell the property by private sale, and, failing in that, sold it at auction on May 12, 1883, for $20,500, $4,000 less than the price at which he claims that it was purchased from him by defendant. Plaintiff testified that the market value of the property in April, 1883, was about $20,500 or $21,000. These are, I think, the material facts as testified to by the plaintiff.

The question to be considered is whether or no the transaction, as thus described by him, constituted a contract by the defendant to purchase the property and take a deed for it and pay for it, according to the terms as set forth in the receipt drawn up by the plaintiff and given by him to

defendant. Did the delivery by plaintiff to the defendant of the receipt, and its acceptance by the defendant, coupled with the delivery by the defendant to the plaintiff of fifty dollars, as stated by the plaintiff, considered in the light of all the attendant circumstances, constitute, or supply sufficient evidence of a contract on the part of defendant to purchase the plaintiff's property, under the provision of the Statute of Frauds as now in force in this State? The section of the act bearing on this subject is as follows:

"Every contract for the leasing for a larger period than one year, or for the sale of any lands, shall be void, unless the contract or some note or memorandum thereof expressing the consideration be in writing and be subscribed by the party by whom the lease or sale is to be made."

This receipt sets forth, I think, with sufficient accuracy the description of the property, the price and the terms of sale, to constitute "a note or memorandum of sale" by the plaintiff, under that section. But that is not the question here. *The question is, did the whole transaction constitute a contract on the part of the defendant to buy?* The section above set forth does not require that the contract to purchase land should be in writing. But, nevertheless, a contract on the part of the purchaser is necessary to establish any obligation against him, and the burden is on the plaintiff to prove that such a contract was made. The plaintiff's claim here is that the acceptance by the defendant of the receipt drawn up by the plaintiff, and payment by the defendant of fifty dollars, constitute a contract on his part, or in evidence of a contract.

From a dictum in the opinion of the Court of Appeals, in Cagger *vs.* Lansing (43 N. Y., 553), it may be inferred that the Court held it to be law that the delivery by the vendor to the purchaser of a written contract for sale of land subscribed by the vendor alone, and its acceptance by the purchaser, would constitute a contract on the part of the latter to purchase, if it were accepted by him as a valid subsisting contract. But if not so accepted that it would not be binding on him.

Did defendant here accept this receipt as "a valid subsisting contract" by the vendor to sell him this property? The burden of proving that he did so accept it was on the plaintiff. The question can be answered only by considering the circumstances of the whole transaction in defendant's store, and also what occurred at the interview in plaintiff's office next day.

The payment of money on account of a purchase of land is held not to be of itself evidence of a contract to purchase the land (Cagger *vs.* Lansing, supra.; Baldwin *vs.* Palmer, 10 N. Y., 232).

In Raubitchek *vs.* Blank (80 N. Y., 482), an action was brought for payment of a check valid on its face. The defendant pleaded want of consideration, and the burden of proof was on him. It appeared that the check was given as part payment on a verbal agreement for the sale of land; that a receipt signed by the vendor was given to the purchaser, which receipt contained enough to constitute a note or memorandum under the Statute of Frauds. It was held that the defendant failed to show that there was not good consideration for the check; that the receipt amounted to a contract of sale sufficient to satisfy the Statute of Frauds, and was binding on the vendor; that the transaction bound the purchaser also, on the ground that the receipt and the check formed the one contract, the mutual relations of these several writings appearing on their face.

This case has been referred to in the argument, but is not in point with the case at bar, for the burden of proof there was on the defendant to prove that no valid contract existed on the part of the vendor to sell the property, whereas, in the case at bar, the burden is on the plaintiff to prove that there was a valid contract on the part of the defendant to buy; and it is worthy of note that only three members of the Court of Appeals concurred in the decision in that case.

The question then in the case at bar is whether there is evidence enough to go to the jury that defendant understood the receipt to be, or that it was intended by plaintiff to be, a valid and subsisting contract for the sale of the land, and that defendant accepted it as such. There is no evidence that he did so.

At the interview in his store, defendant directed his bookkeeper to draw a receipt. The bookkeeper requested plaintiff to draw the receipt himself. The document was in form a receipt, and in the interview and conversation between plaintiff and defendant it was called a receipt. The agreement then made between plaintiff and defendant that they were to execute a con-

tract in counterpart the morning after that interview does not favor the conclusion that defendant understood that a valid and subsisting contract binding plaintiff had been made, or was intended to be made, by plaintiff, and that the defendant was bound as a purchaser by reason of the delivery to and acceptance by him of a contract.

If defendant believed, and had reason to believe, that the paper then signed by plaintiff and delivered to him was a receipt and nothing more, there was no valid or binding contract between them. A strong preponderance of evidence is that he did so believe.

I have considered this question so far by the light only of the evidence in its aspect most favorable to the plaintiff, and I find therein no proof of any valid contract on the part of the defendant to purchase this property.

At the trial of the action all evidence on both sides was received that was believed to be material and relevant to a full understanding of the whole transaction; and, taking the evidence in the case altogether, I think that there is not only a failure of necessary proof by the plaintiff but a preponderance of evidence in favor of the defendant.

His conduct may have been unbusiness-like, vacillating, and, on various grounds, open to serious objection, but I see no evidence in the case that would have warranted a jury in finding that he had violated a contract by reason of which plaintiff was entitled to claim damages against him.

The motion for a new trial is denied, but without costs."

Possession of Premises is Notice.—If the contract is recorded, and the buyer goes into possession of the premises, then any subsequent purchaser or mortgagee would be deemed to have notice of the contract. And bear in mind that possession of property is always notice of a claim of ownership; so that before you pay your money for a deed (or hand it over for a bond and mortgage), carefully inquire of all persons, tenants or others, in possession of the property, who owns it, and how they hold possession.

Possession of Wild Land.—Of course it is difficult to say what is actual possession of wild lands; in one case a man was sued for having cut bark on wild land and he showed a receipt for money for which the owner had contracted to give a deed for the land, and the court held that this receipt was a contract for the sale of the land and that by cutting bark or timber from it the person who paid the money, having taken such possession of it as was possible, had become the equitable owner and could not be made to pay the value of the bark cut, although he had not paid the balance of the price, and the former owner had continued to pay the taxes on it.

Possession.—The contract is not of itself permission to the buyer to go into possession, unless it expressly says so, and the buyer who enters and is turned out by force by the owner could not successfully sue the latter for trespass; if, however, the land be vacant and the purchaser has paid the entire price and has done all that he agreed to, and all that remains for the seller to do is to give the deed, there is an implied agreement or license that the buyer may at once take possession and have the use of the land.

If the buyer, however, before he examines the title takes possession under the contract and makes improvements and it afterwards turns out that the seller is unable to convey, the former cannot recover the cost of the improvements if the latter contracted in good faith and has not refused to perform.

Taxes.—Different views are often entertained by buyer and

seller as to which shall pay taxes; for example, a contract might be signed early in September, the deed to be given in October, and in the meantime the tax levy be confirmed, say on September 23d; then the buyer insists that the seller shall pay them, and *vice versa;* in this case the seller must pay. On the other hand, the contract might have been made August 23d, to be closed thirty days from date (September 22d). Here the buyer would receive all the purchase money, and the very next day the buyer's property would be liable for a whole year's taxes. These facts are usually, but not always borne in mind when the contract is made. To produce any different results any desired different arrangement must be distinctly specified in the contract.

Party Walls.—Of course it is of importance to know if a house has a party wall on either side. While each adjoining owner has an easement in the land of the other upon which the wall stands, such a wall is not an "encumbrance" under the covenant in a contract or deed against encumbrances; but a sound party wall cannot be taken down except by mutual consent. Repairs to it must be paid for by each owner ratably, but one party has not the right to make the other pay towards rebuilding it should it be totally destroyed as by fire. The right to such a wall continues so long as it is sufficient for the purpose and the adjoining buildings remain in condition to need it. Division fences must be maintained, in New York at least, by the adjoining owners under State statutes and city and village ordinances.

Title.—When you agree to sell land you impliedly agree to give a good and unencumbered title. Every purchaser has a general right to require such a title without its being written in the agreement; and certainly where the seller contracts "to give a deed free of all encumbrances," or "a good warrantee deed," or "a good and sufficient deed," unless the contract shows on its face that he has merely agreed to sell the title which he has, whether defective or not; but this is only true of a contract, and as soon as that is consummated by the delivery of the deed the buyer must look out for himself and see that the deed contains express covenants. If the contract is merely to convey the land, that means a conveyance in fee. You cannot be compelled to pay your money and take a doubtful title or an encumbered property. It would be a doubtful title if it were to expose you to a lawsuit, but you cannot reject it simply on a possibility of its proving to be imperfect. Where a husband has agreed to sell, the wife must sign the deed, although she may not have signed the contract, in order to give a good title.

Deed.—You must take care what kind of a deed you agree in your contract to give, or agree to take. If it says that the seller is simply to give a deed, that is satisfied by his giving one without warrantee or covenants. If the agreement is simply to give a deed in fee, that will not be satisfied by giving a title subject to

encumbrance. If the words "good and sufficient deed" are used, the seller is bound to convey a good title; he must give a warranty against encumbrances, and must convey the legal estate in fee, free from all other claims or liens whatsoever; the seller's wife must join in such a deed. If the contract says the "title to be satisfactory," that implies only that the title shall be good and marketable. The best way to put it is "a full covenant warrantee deed."

Quit Claim Deed.—A quit claim deed does not give a very good title; it simply conveys whatever right or title or interest the grantor may have in the property described, at the time that he signs and delivers the deed; it would, however, take precedence of a prior unrecorded warrantee deed from the same grantor, if the purchaser under the quit claim has no notice of the prior deed and if there is nothing stated in the quit claim which suggests an earlier conveyance; but a quit claim deed will not operate, as a warrantee deed does, to carry subsequently acquired title of the grantor; if you take such a deed you can hardly be regarded as a *bona fide* purchaser without notice of outstanding titles and equities; you obtain just such a title as the seller had, and the land in your hands would remain subject to all the equities attaching to it in the hands of the seller, though they may be unknown to you; even in the absence of fraud by accepting such a deed you take the risk of the title; the seller virtually declares that he will not warrant the title even as against himself; a buyer might much better take a

Deed of Bargain and Sale, wherein, although the seller makes no express covenants, he really grants or conveys the property for a valuable consideration, and thus impliedly claims to be the owner of it.

Executor's Deed.—Of course if the contract is made by executors under the will of a deceased owner they can only agree to give an executor's deed in the usual form.

A Full Covenant Warrantee Deed contains six covenants: First, the covenant of seisin; second, of right to convey; third, against encumbrances; fourth, for quiet enjoyment; fifth, further assurance; sixth, warranty. And these covenants are all worth having.

Covenant of Seisin; Covenant of Right to Convey.—The first two are practically the same thing, that the seller has possession of the premises and the right to sell them; you know that it is unlawful to convey land when you are not in actual possession or control of it—that is, where some one is holding it in adverse possession; so if the grantor is not then possessed of the legal title and is not in possession of the premises when he delivers the deed, that covenant is broken as soon as it is made, and the grantee (but no one else) may at once bring an action for damages for the breach of it.

The Covenant Against Encumbrances provides security against the assertion of every right to or interest in the land which may exist in third persons, inconsistent with the passing of the fee by the conveyance; such as a mortgage, taxes, an inchoate right of dower, judgments, conditions and covenants restricting the use of the premises; also existing easements upon the land, such as private rights of way, rights of artificial water courses, or drains, or sewers, or a right to cut trees, or to mine, or to maintain a dam. A seller, when he makes his contract, must therefore be very careful to satisfy each and every encumbrance or lien of such a character that it would be allowed to remain on the property when he gives his deed, for he cannot put it in his deed if it is not written in the contract, and if it should be left out of the deed any one of these circumstances will constitute a breach of this covenant even though the grantee is aware of its existence when he takes the deed and pays the consideration.

Inchoate Right of Dower.—It may be remarked here that an *inchoate* right of dower is a right that the wife has while her husband is alive; she really has not got any dower until she is a widow, and that is why the blank space usually found in the printed forms of deeds is written in with the words dower *and right of dower.*

The Covenant for Quiet Enjoyment is an assurance against the consequences of a defective title and any disturbance thereupon; however, nothing but actual or constructive eviction from the land by the assertion of a paramount title will constitute a breach of this covenant; and indeed it is almost entirely covered by the covenant of warranty.

The Covenant of Further Assurance is that the seller and his heirs will hereafter sign, obtain, and give any further deeds that the buyer or the latter's lawyer may demand, but at the expense of the buyer; and of course such a covenant is worth having.

Covenant of Warranty.—That the latter may be broken there must be an actual or constructive eviction from the whole or from a part of the premises. But the grantee need not resist the claim of the contestant until he has been evicted by process of law; he may voluntarily yield the possession upon the demand of the owner of the paramount title; but he does this at his peril, and if he should bring a suit upon the covenant the burden of proof would then be on him to show that the title to which he yielded was really paramount; a judgment against the buyer in an ejectment suit would be a breach of this covenant, or one in favor of a right to an easement, or to a widow's dower, or in favor of a mortgage, when either is enforced.

Time of Performance —At law you are held very strictly to the time fixed by the contract for the actual delivery of the deed; this is a case where time is said to be of the essence of the contract—that is, a vital provision of it. If the contract should happen to leave that out a reasonable time must be allowed. But the time

named may easily become immaterial by the conduct of the parties, especially if they have once acquiesced in extending it. As a general rule, if a party has not been guilty of great neglect, if his delay can be easily explained consistently with good faith, the court of equity will afford relief. Each case, however, will depend upon its own circumstances, and the neglect or default of one party will not be excused where it would seriously injure the other party. If by accident you name in your contract a legal holiday or a Sunday as the day for closing the contract, the law says it shall be closed the next following day.

Tender of Deed.—The seller cannot sue for the price or for damages for the non-performance of the contract, without having tendered the deed, unless the buyer has waived the tender, or has otherwise made it useless to offer it. And in New York it is not necessary for a vendor to make out and tender a deed on the day the purchase is to be completed; he is not bound to prepare it until the vendee is ready to demand it, and even then he is allowed a reasonable time to draw and execute it. If several lots were sold the seller is bound, if required, to give separate deeds.

When Title Passes.—The title to the land passes to the purchaser when he accepts the deed, and, as we said before, the agreement then becomes *functus officio*, and the rights of the parties are thereafter to be determined by the deed and not by the contract; still, the contract might contain collateral covenants or stipulations, for instance, to do a series of acts at successive periods, for which purposes the contract would still remain alive. If either party with good cause desires to rescind the contract he must act promptly; and the vendee especially should offer to rescind it as soon as he discovers the defect that entitles him to do so.

The Deed, Not the Contract, Gives Title.—A contract for the sale and purchase of land is in its nature executory and does not give the buyer any present title; it is the deed which passes the title, and the acceptance of the deed is an execution of the contract which thereby becomes void and of no further effect. Equity sometimes treats of a contract for the sale of land as if it had been executed, the purchaser being regarded as the owner of the land, and the seller as owner of the price for it and as holding the land in trust for the purchaser.

Subscribing Witness.—It is not necessary that the contract should be also signed by a subscribing witness; in fact, I would rather not be bothered with a subscribing witness to any instrument if it be "acknowledged" properly before a notary or commissioner of deeds, or justice of the peace, then it needs no other evidence to prove it. Get your contract so acknowledged by all who sign it.

Seal.—It is not necessary that the contract should be under seal. There are these advantages about going through the legal form of putting a seal on any instrument; the seal is of itself proof of a

valuable consideration, and a seal instrument is not outlawed under twenty years.

That excellent lawyers' journal, the New York *Daily Register*, lately published the following pithy remarks upon the use of a seal:

"Now the law reformers are attacking that sacred symbol, the seal. Is there to be no end to their audacity? Next they will ridicule signatures. What is more ludicrous than the legal effect of a mark or an initial?

"There is so much need of improvement in the law that it may seem venturesome to deny that any particular change would be any improvement; but we nevertheless must venture the assertion that in those jurisdictions where the seal is retained and used it has an important and valuable function, which doubtless we could do without, but which nevertheless is convenient and useful, and which no sarcasm can supersede. In itself there is nothing more insignificant or even undignified than a scrawl annexed to a signature, but, in the usage as it is commonly understood and in the rule of law which it does signify, it is important.

"Thus a man makes a compromise and gets full acquittance. He knows that if he only gets an ordinary receipt in full the creditor can attempt at least to explain it away, if not indeed wholly to disregard it; but if he gets a sealed release, he knows that he has a protection which the creditor will not undertake to question. The simple rule that the paper wafered on, or n some jurisdictions a scrawl following the signature, will make this difference in the effect of the instrument is a great convenience.

"In the business transactions of men there are many cases where receipts in full are given which the parties do not mean or desire to be conclusive to the extent of a sealed release. If the symbol of the seal were abolished, men would still continue to endeavor to make these two classes of instruments, and the lawyers would have to devise some form of words which would supply the place of a seal, as, for instance, the clause reciting the occasion in conveyances of an absolute and conclusive release, and then it would take some years of doubt and litigation to determine whether such a clause would have the effect a seal has at common law, and what was the proper form in which it should be expressed.

"Again, a promise to pay money, if unsealed, is barred by the statute of limitations at six years; if under seal, it is not barred until twenty years. This is a convenient and desired distinction. In mercantile affairs men prefer the shorter limitation; in permanent investments they prefer the longer limitation.

"This is the reason why in one case they use a promissory note and in the other a bond. There is no law requiring men to use seals for such purposes, but the substantial advantage of the distinction is the reason why their use continues. If seals were abolished, conveyancers would at once be requested by their clients to devise some form of words that would serve to take the place of the seal, and with the same uncertainty as in the case of a release.

"The law does require a seal to transfer real property. This requirement may be unnecessary, but we have little doubt that if seals were abolished purchasers of land and mortgages would still desire conveyances to be sealed, and that the signers of instruments would still continue, as a general thing, to consider a little more carefully an instrument which bears a seal before signing it than a simple contract. Nor is it just to say that a sealed deed is worthless; for if any consideration has been paid it is good as an executory contract to the extent of the act of the purchaser.

"In fact, the distinction between sealed and unsealed instruments serves really in the ordinary affairs of business men somewhat to the same useful purpose that the distinction between oral and written contracts serves in conveyancing. A man who contemplates parting with the title of real property may negotiate as much as he please with the offer, and accept offers or come as near an offer or as near an acceptance as negotiation may bring him without any fear (as long as he receives no money, or no consideration and signs no paper) that he will be bound for anything except perhaps brokers' fees, until the terms are so far settled and agreed npon as to be reduced to writing and signed.

"In itself, the scrawl of the name at the bottom of a paper is as ridiculous a thing as a scrawl or a wafer, but its legal significance is of great value and importance. In an abstract, moral or theoretic sense, there is much plausibility in saying that a man should be as much bound to convey by a verbal offer accepted as by a written one. But to abolish the distinction between verbal and written contracts to convey land would turn dealing in real estate into a perilous sort of business. The nature of the business itself as transacted by men as they go, negotiating under incomplete knowledge and fickle impulses and varying necessities, requires that there should be some separate formality to dlstinguish between coming to an understanding and an actual binding contract, and that men should be left free to come to a definite understanding and agree with each other, while yet the insignificant scrawl of the signature which is necessary to turn that understanding into a binding contract should remain to be done as a separate act.

"The ludicrousness of the symbol is no argument against the deep-rooted distinction in the usages and customs of business, and to abolish the seal would not obliterate the distinction."

Signatures.—As we have said before, it is not absolutely necessary that the contract should be signed by both parties; but in order that either party can be successfully sued, for example, before the buyer could be forced to pay the price agreed on, he must have subscribed the contract, unless indeed he has entered into possession of the premises, and thus there is a partial performance sufficient to take it out of the rule of the statute which requires the contract to be in writing; but as there is a right way to do everything, and you never know what may happen, always have the buyer sign as well as the seller.

Recording Contract.—Theoretically the record of a contract is not notice to a third party who might buy from a dishonest seller and take a deed of the same piece of property, without knowledge of such an outstanding contract; he is not bound to search for the record of such a contract; but if the contract be recorded, as it often wisely is, the register or county clerk will return a memorandum of it on a search for conveyances, and then knowledge, that is, notice of it will be brought home to the otherwise innocent third party, and the rights of the would-be purchaser under the first contract be preserved. It is therefore often wise for the buyer to go to the expense of recording his contract.

Sometimes such a contract is given by way of security for a debt; it is then a mortgage and should be recorded with mortgages.

Vendor's Lien.—The seller of lands has a lien on them for the unpaid purchase money against the buyer; but not against one who has bought in good faith from the first buyer and without a notice of the original vendor's lien; but if a *bona fide* purchaser has bought without notice he will not be protected if he pays after notice; he must have purchased in good faith, have paid a really valuable consideration, and must have known no fact sufficient to put him on inquiry, or the original lien of the seller will survive against him.

The seller can waive his lien, and that very easily, by any act which shows his intention to release the land; as for instance the taking of a mortgage, or the buyer's note with security; or the note of a third party, even though it should prove worthless; but merely taking unsecured personal liability of the buyer, as for example his note alone, is not such a waiver; nor would it be if he were to take securities known to the buyer to be worthless but represented by him to be good. A receipt of part of the purchase money is not a waiver of the seller's lien for the balance. But if the seller ever gives up his lien fairly and willingly, that is the end of it, and it cannot be revived again in his favor.

Buyer's Lien.—But the buyer also has a lien on the land for money which he may have paid on the contract for its purchase, when the contract is broken by the seller; and if he has entered into possession of the land and made improvements on it he would have a lien for their value.

In an ordinary contract where the buyer has to pay and the seller to give the deed at the same time, neither one can successfully sue without alleging and proving the performance on his own part, or readiness and willingness to perform.

Buyer Cannot Get His Earnest Money Back.—If the seller has performed his part of the contract, and the failure to carry it out is the fault or misfortune of the buyer, the latter cannot recover back any money that has been paid by him on account; he can only get it back when both parties agree to rescind the contract, or where the seller is unable or unwilling to perform it on his part, or else has been guilty of fraud in making the contract. And so a buyer who has paid money on a void contract for the sale of land, which would come within the statute of frauds, cannot recover it back if the seller is able and willing to fulfil the contract on his part.

Buyer Not a Tenant.—A party who goes into possession of land under a contract, before he gets his deed, has been held by some courts to be a tenant at will; as such he would be entitled to the growing crops, supposing the land were a farm; and on the other hand, if he had had any beneficial use of the premises and then abandon them and broke his contract, he could be made to pay rent for the use and occupation; the courts have held both ways, however, on this question, and the latest decisions, and those which would, I have no doubt, govern in the State of New York, hold that the relation of

landlord and tenant cannot exist between the buyer and seller of land when the latter enters into possession under a contract and fails to pay the purchase money; nor would such a default entitle the seller to claim the contract as void and hold a buyer as a tenant liable to pay rent; but he can bring an ejectment suit to get possession of the land, and sue for the purchase money, or bring a suit in equity to enforce his vendor's lien.

Damages for Breaking Contract. — Ordinarily the damages which a buyer can recover against the seller, when the latter breaks his contract and fails to give a deed as agreed, will be the amount that the buyer has paid on account, the lawful interest, and probably, I may say certainly, his fair expenses that he has paid for examining the title; this is where the seller has been guilty of no fraud, but the contract was made in good faith, and he has been unable to perform. If, however, the seller has been guilty of fraud, or absolutely refuses to give a deed when he can, or has undertaken to sell when he knew that he had no authority to make the contract, or if when he might remedy a defect in his title he refuses to do so, he can be made to pay the buyer damages for the loss of the bargain, and the proper measure of such damages is the value of the property at the time he broke the contract. If the seller, believing that he had the right to sell, should make the contract in good faith and then discover a fault in his title before he has received any of the purchase money, no damages could be recovered from him for refusing to give the deed.

If after you take the contract and before you get the deed you employ and pay an architect to make plans for a building to be erected on the premises and the contract is broken and you do not get your deed, you cannot include in your damages the expense incurred for the architect's plan; the contract does not contemplate that the purchaser should prepare to build as if he were the owner before he becomes owner; it leaves him, until its promised performance, without the title or power or interests of owner. The expense therefore is not within the contemplation of the parties, nor is it an ordinary or anticipated consequence of the making of the contract.

Damages Against Seller for Fraud by Agent.—If the seller receives and keeps the price, where his agent has been guilty of fraud and misrepresentation, even if the latter were unknown to the seller, the seller is liable to the buyer, and the latter may either reconvey and recover back what he has paid, or keep the land and sue for damages for the fraud.

Seller's Damages.—The only way in which the seller can recover damages from the buyer for a failure to accept the deed is by an action for specific performance; and of course the measure of those damages is the full contract price. It is customary in the case of a sale at auction where the purchaser does not come forward and complete his purchase to put the property up again, and then the damages that can be claimed from the first purchaser will be

the difference between the price at which the premises are first struck off and that which it brings at the second sale, together with the expenses of the re-sale; but this is not necessary in the case of a private sale, at least in New York, and the seller can recover the full purchase price and interest, and the buyer who has failed to complete cannot limit him to the actual damages caused by the breach of contract.

Liquidated Damages.—The parties, however, may and often do agree in advance how much damages shall be paid for breach of contract, and this is written in the contract, but you want to call these liquidated damages and not a penalty.

Quite often a clause is inserted in the contract giving to either party a certain sum, five hundred or a thousand dollars, or upwards (according to the value of the property) as liquidated damages to be paid by the other should the latter fail to give the deed or pay the price. These are put as *liquidated damages*, and not as a penalty, because the buyer or seller might be damaged by such a failure, indirectly yet seriously in many ways, and yet it would be difficult, and indeed impracticable, to put a money value on his damages; for this the law allows the parties to name a lump sum, and that will not be reduced nor inquired into by the courts. If, however, you should write in your contract that such an amount should be paid by either party as *a penalty* for failing to carry out the contract, the law is opposed to penalties, mitigates and lessens them when possible, and if the defaulting party refused to pay such penalty, the one who sued for it would have a hard time proving exactly the money value of his damages.

Rescission.—A contract may be set aside for mistake of fact; also one which has been procured by fraud or by false representations; but there must be no delay in bringing such a suit; but if the purchaser knows the representation to be false, then his conduct was not influenced by it and he has no right to make complaint. Such a contract may be set aside for the misrepresentation of the buyer as well as that of the seller; in a case in New York the buyer said that the premises, a piece of wild land, were worth nothing except as a sheep pasture when he knew that there was a valuable mine on it of which the seller was ignorant, and the contract was set aside for fraud. And there may be constructive fraud which will avoid the contract, as where the seller or the buyer is a lunatic or an idiot, or where the deed or contract was obtained from a man intoxicated. The Court of Equity will quickly interfere in a case where there are trust and confidence on one side and influence and control on the other, as where a parent sells to a child or a guardian buys from his ward; and in another New York case the conveyance was set aside where an uncle induced his ignorant young nephew to accept a deed and to cancel a debt of the uncle, three times the value of the land. It must be borne in mind that in such cases, where there was a relation of trust and confidence

between the parties, it is not the duty of the one imposed upon to show that the contract was unfair, but the burden of proof is on the other party to show that there was absolute fairness and equity in the whole dealing. Agreeing to take too small a price for your land is not a good ground for avoiding your contract; but if there be other circumstances existing which make it inequitable to enforce the latter then inadequacy of price may also be considered; this is more likely to arise where confidential relations have existed between parties and have been abused.

Fraud—Purchaser's Remedies.—A buyer of real estate who was induced to purchase by means of false representations has his choice of remedies; he may rescind the contract and after an offer to reconvey, recover back the consideration paid, or he may keep the land and recover damages for the fraud. The measure of these damages is not, as it is in case of a breach of a covenant in a deed, the price paid and interest, but is the difference in value between the property sold and that for which it would have sold had it been as represented.

Reformation for Fraud or Mistake.—If when you are selling your land you make erroneous statements about it, no matter if you believe them to be true, it would be a material mistake of fact; and if you did not believe them it would be a fraud on the purchaser; and in either case he could get the Court to reform the contract or the deed.

Alteration.—A material alteration of any written contract by one of the parties to it, without the knowledge or consent of the other, not only discharges the latter from all liability upon it, but if fraudulently made will release him also from all liability upon the consideration for which it was made.

Specific Performance.—When either party will not keep the contract, when the seller will not give the deed or the buyer pay the price as agreed, the injured party may bring a suit in equity and force the delinquent to carry out the agreement; thus the Court may order the seller to accept the price and to deliver a properly executed deed, and may lock him up in jail until he obeys If, however, the injured party can be compensated in money the relief of specific performance will not be granted to him; it is a remedy which rests in the sound discretion of the Court. Still it is almost a matter of course for specific performance to be decreed where a contract for the sale of land is fair and certain and reasonable.

In one case a buyer in New York City only gave himself eight days in which to get his title searched; when the time was up of course he was not ready and he asked an adjournment, which was refused, and the seller kept the $500 that had been paid down, and kept his land; but three weeks afterward the buyer, having found the title good, offered the balance of the price, and when the deed was refused him brought such a suit, and the Court ordered the

seller to give the deed and take the money, as it was shown that the situation of the property and of the parties had not changed so that any injury would result to the seller. And that is the principle that underlies all decisions in suits for specific performance; relief will be given to a party who seeks it if he has not been guilty of negligence, brings his suit within a reasonable time, excuses his delay in completing the contract, and the situation of the parties or of the property has not changed so that injury will result. Some sellers would, in the case just cited, have found another buyer and have had a new contract to show at a higher price within that three weeks, whether the latter contract was ever carried out or not.

Specific Performance—Title.—Before a buyer can successfully resist performance of the contract on the ground of defect of title there must be at least a reasonable doubt as to the latter, such as affects its value and would interfere with its sale to a reasonable purchaser, and thus render the land unmarketable. A defect in the record title may furnish a defense to the purchaser. But there is no inflexible rule that the seller must furnish a perfect record or paper title; it has frequently been held that defects in the latter may be cured or removed by parol evidence.

Good Title Implied.—If your contract should be so carelessly drawn as not to specify the terms or form of the deed that is to be given, nor the nature and extent of the estate in the property intended to be sold, then such a contract impliedly warrants that the seller has a good title and will convey a good title, free of all encumbrances.

Fixtures.—Buyers frequently desire to know whether certain articles in the premises they contract to purchase will come to them under the contract as part of the real estate; this depends upon whether such articles are "fixtures" or not in the eye of the law. The rule as to what shall be deemed fixtures varies somewhat when the question arises between a landlord and tenant and between a buyer and seller of real estate.

Mirrors secured to the wall by an iron clamp, and let into and glued to the mantel piece, and constructed at the same time and with frames of the same wood as the mantel, would be held to be fixtures; while a mirror resting upon a bracket and connected with the wall only as picture frames usually are, would not be. Chairs furnished to a theatre, of a special pattern adapted to the place where they are set and screwed to the floor because they cannot stand alone, are a part of the building. A steam engine and boiler may be set up in a building in such a way and under such a bargain between the seller of these articles and the landowner that they shall remain personal property, but machinery of great weight, especially adapted for a factory and permanently fastened therein, with the intention of leaving it there for permanent use, such as machinery for a twine factory or for a paper mill, would be fix-

tures. Gas fixtures in a building, which can be taken away by simply unscrewing them, are only personal property and would not belong to the buyer unless specifically mentioned in the contract for the sale of the house and land; but the opposite has been held with regard to a sun-dial and a statue out of doors.

There are three requisites to constitute an article a fixture as between the seller and buyer of real estate; the article must be actually annexed to the land or house, it must be applicable to the use or purpose to which the part of the land or house with which it is connected is appropriated, and the person who annexed it to the house or land must have intended to make a permanent accession to the freehold.

"While not agreeing as to the necessity for or the degree of importance to be attached to the fact of actual physical annexation, yet the authorities generally unite in holding that, to constitute a fixture, the thing must be of an accessory character and must be in some way in actual or constructive union with the principal subject, and not merely brought upon it; that in determining whether the article is personal property, or has become a part of the realty, there should be considered the fact and character of annexation, the nature of the thing annexed, the adaptability of the thing to the use of the land, the intent of the party in making the annexation, the end sought by annexation, and the relation of the party making it to the freehold. These other tests named, while having an important bearing upon the questions, whether there has been an annexation, and, if so, its effect, do not, however, do away with the necessity of annexation, either actual or constructive, to constitute a fixture. This would involve a contradiction of terms, and wipe out the fundamental distinction between real and personal property. A thing may be said to be constructively attached where it has been annexed, but is separated for a temporary purpose, as in the case of a millstone removed for the purpose of being dressed, or where the thing, although never physically fixed, is an essential part of something which is fixed; as in the case of keys to a door, or the loose cover of a kettle set in brickwork. It is, perhaps, somewhat on this principle that the permanent and stationary machinery in a structure erected especially for a particular kind of manufacturing has been held fixtures, although very slightly or not at all physically connected with the building; because without it the structure would not be complete for the purpose for which it was erected. Ponderous articles, although only annexed to the land by the force of gravitation, if placed there with the manifest intent that they shall permanently remain, may be fixtures. But, while physical annexation is not indispensable, the adjudicated cases are almost universally opposed to the idea of mere loose machinery or utensils, even where it is the main agent or principal thing in prosecuting the business to which the realty is adapted, being considered a part of the freehold for any purpose. To make it a fixture, it must

not merely be essential to the business of the structure, but it must be attached to it in some way, or, at least, it must be mechanically fitted so as, in ordinary understanding, to constitute a part of the structure itself. It must be permanently attached to, or the component part of, some erection, structure or machine which is attached to the freehold, and without which the erection, structure or machine would be imperfect or incomplete.

"In the application of this principle the Courts have held that beer casks, fermenting tubs and a copper cooler used in the brewery were protected by a chattel mortgage, and not covered by the mortgage of the real property, saying that the intent that they should remain in this brewery for permanent use there is unimportant. Intent alone will not convert a chattel into a fixture. A farmer may take a plow or any other farm implement upon his farm with intent to keep and use it there until it wears out, but this will not make it real estate."

Repairs.—The seller is not bound to keep the premises in repair after the contract is signed, unless the latter expressly says so.

Buyer Cannot Dispute Encumbrances.—If you are the buyer and find encumbrances on the title, if you should accept a deed subject to all liens, which you assume and agree to pay, you cannot afterwards dispute the validity of any of those encumbrances—for example: If a mortgage on the property were tainted with usury you could obtain no advantage from that, but would be obliged to pay the whole amount of principal and interest.

Encumbrances.—Both seller and buyer, therefore, must be very careful to enumerate in the contract what encumbrances are on the property. A party wall is not an encumbrance, but an agreement to allow a clothes-post (as often in tenement property) is; it is not practicable to enumerate here all rights that would be so held; and the general rule can only be given that in case of doubt as to any fact affecting the particular piece of property, that fact should be mentioned and the agreement about it noted in the contract.

There is No Implied Warranty in a Contract for the sale of real estate except as to title; and as we have said before, all agreements relating to the purchase and sale are merged in the deed, unless the contract clearly shows a different intention; this includes the covenant of title; a good example of a contract which had covenants that remained alive after the deed was given is one where the buyer agreed to take the property subject to a mortgage and to taxes not exceeding two thousand dollars, and he agreed to assume and pay the taxes; the seller gave a deed which conveyed the property subject to the mortgage and taxes, but which did not contain a covenant on the part of the buyer to assume and pay the taxes as he had agreed, although he kept back two thousand dollars out of the consideration named; the mortgage was afterwards foreclosed and those unpaid taxes were paid by the referee out of the proceeds of the

foreclosure sale, and the result was a deficiency of over two thousand dollars against the seller. He brought a suit against the buyer on the contract and sale, and the Court decided that the latter's covenant to pay being part of the consideration for the conveyance was not merged in the deed, and that his failure to pay those taxes was a breach of that covenant, and that he must pay said sum of two thousand dollars, by which amount the deficiency judgment had been increased.

"Agrees to Sell," not "Sells."—Frequently contracts are carelessly drawn so as to say that the seller "hereby sells and conveys" to the buyer instead of saying that he "agrees to sell and convey." Such an instrument, however, would not be construed by the Courts as an actual conveyance or deed, but from all the circumstances and from reading the paper as a whole it would be held to be a mere agreement to convey.

Contract Sometimes is a Mortgage.—In order to prevent usury and extortion an agreement to convey land will often be decided by the Courts to be a mortgage upon the repayment of the money paid, with interest; and an agreement to sell the land back again is often held to be similar to a mortgage, for example, in a suit just tried this July, 1885, the facts were that away back in 1852 a man bought property in Thirteenth street for $22,000, which he afterwards conveyed to his wife and died. In 1878 there were two mortgages on the property amounting to only $8,000 in all; the second mortgage, only $2,000, falling due, the widowed owner being financially embarrassed, in order to prevent the sacrifice of the property on a sale agreed with the holder of the second mortgage to deed the property to the latter, and if within three years she should pay up in full the second mortgagee agreed to reconvey it. The old lady, over sixty, was unable to redeem it, and then the second mortgagee claimed to be the full owner; but a suit was brought for a reconveyance and an accounting for the rents and profits on the ground that the contract with the second mortgagee and the deed given under it constituted an equitable mortgage. It resulted in a judgment in favor of the widow.

Contract May Still Exist.—A very good example of the way in which part of a contract may still survive the execution and delivery of the deed is a case where a buyer agreed in the contract to take the property subject to taxes not exceeding $2,000 in amount, and to assume and pay those taxes; after the deed was delivered it was discovered that there had been omitted from it the clause which it should have contained by which the grantee should have assumed and agreed to pay those taxes; when a prior mortgage on the property was foreclosed there was a deficiency at the sale, the amount of which was increased by those $2,000 worth of unpaid taxes, and the buyer under the contract being afterwards sued for that $2,000 the Court determined that he could be held and

was bound to pay it under the covenants in the contract of sale although that clause had been left out of the deed.

Real Owner.—The seller impliedly represents and warrants in the contract, unless there are express statements to the contrary, that he is the owner of the property which he assumes to sell, and while a concealment of his want of title, should it not belong to him, is not necessarily fraudulent, because he may intend and be able to become the real owner before the time of closing the contract, yet if he *did* intend to defraud and deceive on this point and knew that he could not become such owner, the buyer may rescind the contract and recover any money he has paid.

Payment.—If the price is payable in instalments the seller cannot sustain a suit for the balance of the price without first proving that he himself had tendered a deed.

Interest on Purchase Money Mortgage.—Where the contract says that a purchase money mortgage to be given shall bear even date with the deed, "and interest from the date thereof," but does not say what shall be the date of the deed, but only names the date for the delivery of the latter, the mortgage will bear interest from such date named as the date of delivery.

Time.—It has been decided that if the contract expressly fixes the place and day and hour for performance, this makes time "of the essence of the contract;" in the suit that decided this, however, there had been an adjournment to another day and hour to enable the buyer to examine an objection to title which was specified, and when that time arrived the buyer's lawyer was sent for and refused to leave his office and only answered by requesting several days further adjournment; when the buyer afterwards brought a suit for specific performance he was defeated on the aforesaid ground.

Damage to Premises after Contract Signed.—Sometimes after a contract is signed the house burns down, or careless blasting in the neighborhood injures it, or the premises are otherwise damaged; the buyer then objects to paying the full amount of the consideration; but the law is that he must pay in full. Courts of equity consider that a valid contract obliges the seller to give a deed of the land to the purchaser, and they hold that whatever ought to be done should be considered already done, and they look upon the seller as a trustee of the land for the buyer; hence the buyer gets all the benefit if there be any increase in the value of the property after the contract is signed, as from a new railroad or a park, or any other public or private benefit; and he has to stand all the loss or decrease of value that may come, whether the weather damages it, or some part decays, or it burns up, or is battered down by accident, or destroyed by a mob; he must in any event pay the full price to the seller, unless, indeed, the seller himself should do some wrongful act of waste upon the premises which would give the buyer a valid claim against him for damages.

Insurable Interest.—Hence the buyer under a real estate contract has an insurable interest in it to the full amount of the value of the buildings, and can take out a valid policy for the time while title is being examined. If, however, liquidated damages are named in the contract for its non-performance, a policy for that amount would be sufficient to protect the buyer, as he could then safely refuse to complete if the premises were seriously injured by fire.

The seller, however, does not lose his insurable interest because the buyer has also acquired one, but any policy he has will still hold good (provided he notifies the company of the change that has taken place in his interest as such policies all require); only the insurance company, paying his loss, will be subrogated to his rights and entitled to receive the balance of the purchase money from the buyer.

Rents.—If nothing be stipulated in the contract, rent of premises which has not yet fallen due when the deed is given will go entirely to the purchaser; and, on the other hand, rent already due, although even in advance and for a period of time extending beyond the delivery of the deed, will remain the property of the seller. The fairer way, however, is to agree in the contract to apportion the rent up to the date of delivery of the deed.

Interest on the Price.—If the time for closing the title be adjourned by consent for whatever cause, and nothing be stipulated at the time of granting the adjournment, no interest upon the balance of the purchase money to be paid, nor upon any part of the price already paid, can be demanded in addition to or differently from the specific agreements about interest in the contract. And unless care be taken the seller might become entitled to additional rent falling due during the adjournment, or become liable to pay additional taxes (under his agreement to give a clear title), or the buyer become released from paying interest on some mortgage during the period of adjournment. The better way in agreeing upon such adjournments is to stipulate, when agreeing to them, that "the title shall be closed as of the original date of delivery of deed first agreed upon."

Mortgages.—The contract must carefully specify how many and what mortgages are to remain as liens upon the premises; and if any agreement is made as to how long a mortgage has to run, or is to be allowed to remain upon the property, see that this is explicitly stated.

Assumption of Mortgage.—If you do not intend to be bound to pay a mortgage already on the premises (suppose, for instance, that you might be glad to let the property go if only you are *not* bound), be very careful not to "assume and agree to pay as part of the consideration;" all you want to do then is to take it "subject to" a certain mortgage. It is somewhat surprising how often the "assumption clause" slips into a contract, and then (as it must) into the deed, unnoticed by the buyer.

By-the-way, the agreement to assume a mortgage need not be in writing to be valid and binding; an oral promise by the buyer is sufficient where the seller fully performs his agreement, executes and delivers a deed, and gives possession of the premises to the buyer. So look out what you agree to, orally, about that.

[Oral—Verbal.—When you speak of anything agreed to or done by word of mouth, don't call it *verbal;* call it *oral;* everything that is written in words is verbal; that is what verbal means, "by words;" everything that is done or promised in writing as well as in speech is done *verbally;* these words are used very carelessly and incorrectly.]

An agreement to pay the accrued or the future interest upon a mortgage will not, however, bind the purchaser to pay the principal.

Purchase Money Mortgage.—And so, too, if the buyer is to give back a purchase money mortgage for part of the price, all the details about this mortgage should be carefully written out in the contract; not only how long it is to run and at what per cent., but all the special covenants and agreements which the one who is to take the mortgage desires to have in to protect himself; and the buyer must notice these, as some of the more modern conditions in mortgages are quite burdensome.

Mortgage With Full Agreements.—An iron-clad mortgage now contains agreements on the part of the mortgagor that if interest remains unpaid, say thirty days, the whole mortgage may be foreclosed (this time of grace, however, is in favor of the mortgagor); that if taxes or assessments remain unpaid, say ninety days, the whole mortgage may be foreclosed (these days of grace are also in mortgagor's favor); that if default be made in payment of interest or principal when due the mortgagee may at once take possession of the premises, collect the rents, and pay all necessary expenses, without any legal proceedings, and without being deemed a trespasser; that in case of any such default the mortgagee may at once upon beginning a foreclosure suit and without any notice to or consent of the mortgagor have the Court appoint a receiver to collect the rents and take care of the property; that in case of any such default the mortgagee may have the property sold according to law and apply the proceeds to payment of the debt and expenses of foreclosure and sale; that the mortgagor will keep the premises insured or the mortgagee may do it and add the premium to the mortgage; that if the mortgagor does not pay the taxes and assessments the mortgagee may do it and add them on to the mortgage; and that the mortgagor and his heirs and assignees will at any time make and deliver any further deeds and instruments the mortgagee may think he needs to make his title good. Each detail, such as the foregoing and relating to the mortgage, must be specified in the contract of sale, or the buyer or seller cannot insist upon having it in the mortgage when it comes to be drawn.

Mortgage by a Corporation Buying.—Under the laws of New York, before a mortgage given by a corporation can be valid the duly executed written assent of two-thirds of the stockholders must be filed with the County Clerk where the property is situated. This assent, however, is often deemed unnecessary in the case of a purchase-money mortgage given by the corporation; still, as opinions differ, it is better to have the stockholders execute such an assent even in that case, and thus prevent objections, however mistaken, from any source.

Signature by a Corporation.—And, by-the-way, a deed or mortgage or other instrument executed by a corporation does not at law require any signature at all; the president need not put his name there nor sign the name of the corporation either alone or by himself as president; all that is necessary is to affix the seal of the corporation.

However, it is customary to have the executive officer or officers sign, and where the by-laws or the certificate of incorporation, or the charter of the corporation requires in express terms that such instruments be signed or countersigned by certain officers, such signatures would of course be necessary to their validity.

Leases.—If there be an outstanding lease on the premises sold, the seller for his own protection must cause the details of such lease to be specified in the contract, and that the buyer takes subject to the same; so, too, if the buyer wishes to be certain that the premises as leased bring in a certain amount of rent for a certain term, he should have those items carefully mentioned.

Will.—If your property came to you by will, be sure and get good legal advice and know what the will means, and whether you have the power and right to sell, before you sign a contract. Nice questions often arise; parties lately consulted me just in time to prevent their signing a contract to sell and give a warrantee deed, when the will which gave the property left it to the widow for life, then to the son, but if the son should die first and leave no children, before his mother, the widow, then the property to go to the brothers and sisters of the deceased; the widow and son want to sell the property, but no one who knew what he was about would take their deed, and no one to-day can give a perfect title under that will. On the other hand, the General Term of the Supreme Court in New York has just decided, this October, 1885, that where a will left the property to the widow as long as she remained unmarried and his widow, but on her decease or remarriage to the son or his heirs, the title vests in the son, subject to the widow's life estate, and that if they both join in the deed, they can give good title; and the Court made the purchaser take his deed.

Short Contracts of Sale.—While carelessness and haste should by all means be avoided in making real estate contracts, yet sometimes exigencies arise when very brief contracts are necessary: and here I quote, with permission, the practical, pithy remarks of that

eminent lawyer Mr. Austin Abbott, which appeared in the *Daily Register* (the New York law journal), of September 24, 1885:

It is often convenient to know how concise and informal a writing will serve to bind the parties to an executory contract for the purchase and sale of real estate. A clear idea on the point is serviceable often to the attorney whose client brings him a very informal memorandum, as representing a contract he has made and which the attorney is to superintend the fulfillment of. It is also useful often in delicate negotiations, where a nervous or uncertain owner or buyer may hesitate if left long enough to have a formal contract drawn.

The statute requires that "the contract, or some note or memorandum thereof, be in writing and be subscribed by the party by whom the lease or sale is to be made," or "by the agent of such party, lawfully authorized."

The courts unanimously interpret this as requiring a note or memorandum expressing all the terms of the agreement.

The document may be as trivial in form as it could happen to be, if it meets this requirement in substance.

It is no objection to its validity that it is in pencil, or that it has no seal, no witness, no acknowledgment.

An engrossed contract will not satisfy the statute any better than a receipt or a telegram, or an entry in one's diary, or an affidavit in legal proceedings, or correspondence, or even a letter to a third person, so long as the substance is there; the parties, the agreement, the premises, the terms and the subscription.

It is no objection to the memorandum that it was not made at the time the bargain was struck, nor that it was not delivered to the other party, unless it was prepared and subscribed in anticipation of an intended delivery and intended not to take effect meanwhile.

It is clear then that the memorandum is not the contract, but only a peculiar kind of evidence of the contract, without which the contract is not enforcible at law.

The essentials are parties, designation of premises, price, and terms if any credit is agreed on.

Both parties must be designated, and the premises must be designated, but a memorandum is not invalid because it does not give the residence of the parties or the precise location of the premises. An agreement by John Smith to convey to John Jones a house on Church street, without saying anything of the whereabouts of either, would be foolishly meager, but, if litigation arose, Jones might prove that the particular John Smith whom he sued on the contract was the same John Smith who owned and occupied a house and lot on Church street, in the town of Somerville, Mass., and no other on any street of that name, that the lot had well-defined boundaries, and that immediately before signing the memorandum the two men had been in treaty for a sale of those premises. When these circumstances were proved a Court well advised of the present state of the law would hold that the writing sufficiently designated the parties and the premises. But it is nevertheless true that many a purchaser or vendor has been unable to enforce a similar contract because the circumstances were not susceptible of the clear or satisfactory proof necessary to enable the Court to apply it to specific premises and a definite area of land.

It is always enough, however, with land that is in actual possession or has a known designation to describe it by such possession or designation, as,

for instance, the farm now occupied by me, or the house and lot known as No. 1 Church street in the town of Somerville and State of Massachusetts.

There are the best of reasons for giving a full and accurate description such as is usual in deeds when the case allows of so doing, but the advantage secured does not relate to the binding effect of the memorandum, but to the precise extent of the obligation assumed by the signer.

The price and terms, if any, must also be designated, but here again the utmost conciseness is consistent with validity.

A receipt for a payment, if it designates the parties and the premises and specifies the full price agreed on is sufficient, therefore as against the party signing it, except that if it be for a part payment it should fix the time for paying the balance. Whether the latter point is essential, however, the Courts are not agreed. Some have held that on an agreement to pay money without fixing a time the law implies an obligation to pay immediately. This is very true in the case of debtors ; yet, a part payment on an executory contract may justly be thought to imply an understanding that the balance should not be instantly due, but payable at some future day. A receipt for payment in full, however, might properly be deemed to imply an obligation to convey forthwith.

If all these elements of the contract are thus indicated the memorandum lacks only one thing more, and that is words of agreement. The note or memorandum must be a note or memorandum of a contract.

These suggestions are not given as guides for drawing contracts. In a great proportion of cases there would be serious disadvantage in their use. The death of either party, the falsehood of a witness, the destruction of buildings by fire, many other incidents such as often occur between contract and conveyance, would be very likely to invite litigation. No one should rely on such a thread when he can have a strong cord, but there are often cases when the negotiator must do the best the moment admits of. And there are often cases when the attorney has to advise offhand on the sufficiency of such a memorandum.

In the latter class of cases he should ask his client if the scrap of paper shown him embodies all the terms of the agreement, otherwise it may be found not to satisfy the statute.

And for the same reason in drawing a short memorandum especial care should be taken that nothing which is actually agreed on is omitted from the memorandum.

Exchange of Premises.—An exchange of land, according to Blackstone, is a mutual grant of equal interests, the one in consideration of the other. Generally, however, there is an inequality of values which is made good with money, or by mortgage, or otherwise. When one party has performed his part of such a contract and the other for any reason fails to perform on his part, the question arises what damages the former is entitled to. In New York this has been held to be either the purchase money or consideration stated in the deed of the property conveyed by the performing party, or the value of the piece of property contracted to be conveyed to him, as he might elect; and in another case where the defaulting party had agreed to not only convey a piece of land in exchange, but also to pay a certain sum of money, and also to transfer a certain debt due from a third person, and performed all

but the transfer of the debt, the Court decided that the party who had fully performed was not bound to deduct from the value of his piece of property the money and the value of the piece of property he had received and then sue for the balance, but that he might sue outright for the value of the debt which had not been transferred, although that might be greater than the balance of the value of the first piece of property ascertained as aforesaid.

It is better in an exchange to so express it in one contract, just as the agreement is, and not to have two separate contracts of sale from each party to the other, which would have to be connected together by parol evidence should any trouble arise.

Purchaser Not a Tenant.—If a purchaser be allowed to go into possession before he has paid all the price, and he afterwards fails to pay up and refuses to take title, the seller cannot claim that the buyer is his tenant, either at will or any other way, and sue him for rent, for use and occupation; all the landlord can do is either sue him at law for the balance of the price, or better still in equity to foreclose his vendor's lien; or else take the long-winded way of an ejectment suit, where either party has the right to three trials altogether; the wise man will therefor get his money first before delivering possession. Taking a mortgage for part of the price is all right, because the mortgage protects the seller.

Delivery of Possession.—The buyer ought not to pay his money until he gets absolute possession of the premises, otherwise he may get a lawsuit on his hands. Possession can be given by going on the premises and giving the key, or by simply giving the key if the house is vacant; or by assigning over the lease if there be a lease; if there be no written lease the buyer should ask every person in possession by what right he is there, and the landlord should give a letter to each tenant telling him to pay the rent from a certain day when due to the buyer.

To Bind Heirs and Administrators.—If the seller dies, his heirs must carry out the contract and give a deed in accordance therewith. This, however, often necessitates considerable delay. If the buyer dies, his administrator is bound to carry out the contract, pay the price and take the deed. Where, however, the personal estate of a deceased buyer is insufficient to pay his debts, a New York statute provides that his executors or administrators may apply to sell his interest in any land held under a contract for the purchase thereof. The sale to be made subject to all payments due or to become due on the contract.

Assignment of the Contract.—An assignee of a contract for the sale or purchase of land takes it subject to all the equities against, and the special agreement is made by, his assignor. But if the buyer assigns the contract, his assignee is not personally liable to pay the remainder of the purchase money due under the contract, unless there is an express or implied agreement on his, the assignee's, part to do so.

Varieties of Contracts.—There are other forms of contract for the sale and purchase of land, but they are of such an intricate character that even a very wise man who thinks he knows all about everything will feel that he had better get the aid of a man learned in the law upon one of that kind; for example, a man may agree with his wife that he will deed to her his farm, provided she will make her last will and testament in favor of all of their children; this is a contract which the Court will enforce, and if she makes a will in contravention of this the Court will set it aside; another variety is that of a building contract, where land is sold with an agreement by the buyer to build and by the seller to lend the buyer money on bond and mortgage upon the same land and house. It is thought best not to go into discussion of such contracts in this monograph.

Finally.—And, finally, do not either give or take a deed of property until every encumbrance is removed, every little detail of the contract is carried out; if you do, delay in its performance, vexation and trouble will come upon you, and often an expensive lawsuit. And law is war. Both sides lose money in a lawsuit; always willing and eager to set a lawyer at work using up his strength and brains to accomplish their views, but almost always paying him grudgingly, and thinking if he wins that he should look to the losing side for his pay (which the law does not allow), or not charge much for his work, however hard, because his client has had delay and loss; or, if he loses, that he should not look for any pay at all, although he may have worked still harder; not appreciating that it is *the clients* who desire or cause the fight, and that litigation, which is contention, conflict, quarrel (from the old High German *werra*), war, is destructive to property at least, if not to life. If, however, such a conflict be forced upon you, if wise you will not try to protect yourself with a five-dollar shotgun and cheap ammunition, but will provide yourself with the best equipped armament you can afford; pay an active, studious lawyer well, and be benefited by his willing aid.

Many topics and points upon the law of real estate other than those in the foregoing pages have suggested themselves, but as they do not belong to the subject of a contract of sale they are not touched upon. If this be found sufficiently interesting to demand a future edition, the author will be glad to include therein answers to all pertinent questions which he may receive, and which he invites.

[**Apportionment of Rents.**—NOTE.—A New York statute of 1875 was in December, 1881, interpreted to have altered the rule as stated on page 45, and to require apportionment up to date of passing title, but the correctness of that interpretation is doubted, as that statute is deemed to have been intended to apply to cases where title to property changes involuntarily, as by death, and not by contract; the safe way is to put an explicit agreement in the contract.]

A FORM OF CAREFUL CONTRACT.

(Correct amounts omitted for obvious reasons.)

IN CONSIDERATION of the sum of one dollar to each by the other in hand paid it is hereby agreed between William L. Andrews, of the city of New York, of the first part and The J. L. Mott Iron Works, a corporation existing under the laws of the State of New York, of the second part, as follows, viz.:

The party of the second part hereby agrees to purchase from the devisees of Loring Andrews, deceased, all that certain piece or parcel of land, with the buildings thereon, in the city of New York, known as Nos. 84, 86, 88 and 90 Beekman street, known as the St. George Buildings, and the area on the west betweeen said buildings and the property of Tatham Brothers, so far as the said devisees have a right to convey the same, containing in front on Beekman street about one hundred and thirteen (113) feet, eight (8) inches, in the rear about one hundred and twenty-five (125) feet, eleven (11) inches, on the easterly side on Cliff street about one hundred and thirty-three (133) feet, five (5) inches, and on the westerly about one hundred and twenty-two (122) feet, eleven (11) inches, being the entire property known as the St. George Buildings, for the price of three hundred and fifty dollars, to be paid as follows: One hundred and ten dollars in cash on delivery of the deed as hereinafter mentioned, and two hundred and forty dollars by the purchase money bond and mortgage of said party of the second part, on said premises at 5 per cent. per annum interest payable semi-annually, the principal to be payable on or before the expiration of ten years, in annual instalments of not less than twenty-five dollars each, or in multiples of five dollars in excess of that amount at the option of the party of the second part, on ninety days notice in writing; said mortgage to contain the usual tax, interest and insurance clauses. And if the party of the first part so elects it may be divided into several mortgages of such amounts as shall be most convenient for distribution among the aforesaid devisees, according to their respective interests.

The premises are to be conveyed by a good title in fee simple, free and clear of all encumbrances except the existing leases thereon; and the agreement now in force to furnish power from the engine in said building to the premises Nos. 61, 63 and 65 Cliff street, and also subject to all such rights and privileges of light and air and all such rights and privileges in, over and upon a part of said premises as were granted and conveyed by William E. Dodge and others to William P. Tatham in and by a certain agreement or instrument bearing date the 30th day of June, 1860. The party of the first part and the said devisees or any of them shall not reserve any right of way under said agreement of 30th June, 1860, for their adjoining Cliff street property.

The deed of conveyance as to six undivided sevenths of said premises is to be a full covenant warranty deed, subject as aforesaid ; and as to one undivided seventh part thereof is to be a trustee's deed in the usual form. The said William L. Andrews agrees to use his best endeavors to procure the execution of said deeds at as early a date, not later than May 1st, 1880, as practicable; but it is expressly agreed and understood in case of the failure or refusal of any of the tenants in common with said William L. Andrews to execute said deed, that in such case the said William L. Andrews shall not be held personally liable or responsible for such failure

or refusal, but that then and in such case this agreement shall become and be null and void, and neither party shall have any claim against the other for damages by reason of the non-fulfilment hereof through such failure or refusal to execute such deed.

It is understood that the present owners of said real estate are the said William L. Andrews, James B. Andrews, Constant A. Andrews, Loring Andrews, Walter S. Andrews and Clarence Andrews, as devisees under the will of the late Loring Andrews, deceased, and Daniel Morison, as trustee of the separate estate of Isabel Von Linden, the said Isabel Von Linden being also a devisee under said will; and that the said Constant A. Andrews, Walter Scott Andrews and Isabel Von Linden have heretofore authorized, in writing, the said William L. Andrews to accept for them a certain price for the property, and that this agreement is executed under such an understanding. The said Constant A. Andrews and the said Daniel Morison as trustee as aforesaid, execute this agreement for the purpose of ratifying and confirming the said sale as far as respects their respective interests in said premises.

The deed of said premises is to be delivered and the consideration paid at the office of the counsel of the party of the second part, Mr. Geo. W. Van Siclen, No. 146 Broadway, New York City, on the first day of May, 1880, at 12 o'clock noon. The bond and mortgage hereinbefore referred to is to be drawn by De Forest & Weeks, Esqs., the counsel of the vendors, and the expense of drawing and recording the same is to be paid by the vendee.

Witness the hands and seals of the parties the eighteenth day of February, one thousand eight hundred and eighty.

THE J. L. MOTT IRON WORKS, by
JORDAN L. MOTT, President. [L. S.]
WM. L. ANDREWS, [L. S.]
CONSTANT A. ANDREWS, [L. S.]
D. MORISON, Trustee. [L. S.]

WHEREAS, since the execution of the annexed contract, Loring Andrews, owner of one undivided seventh of said premises, Nos. 84 to 90 Beekman street, has died, and The J. L. Mott Iron Works, the party of the second part thereto, has agreed to accept from the owners thereof a conveyance of six undivided sevenths of said premises, and to pay the sum of three hundred dollars therefor,

AND, WHEREAS, the said The J. L. Mott Iron Works is desirous of obtaining the ownership of the remaining one-seventh part of said premises whereof the said Loring Andrews died seized, as soon as a good title thereto can be made and said interest conveyed, and is willing to pay therefor the sum of fifty dollars in cash,

AND, WHEREAS, in order to obtain such conveyance it may become neccessary to take proceedings by action or otherwise to that end, and the said The J. L. Mott Iron Works is desirous of being protected against any cost or expenses in excess of said fifty dollars,

NOW, THEREFORE, this agreement witnesseth that in consideration of the premises the parties to said agreement have mutually agreed as follows:

That the sum of five dollars be deposited in the United States Trust Company, of the City of New York, payable to the joint order of Mr. Francis H. Weeks and Mr. George W. Van Siclen, the attorneys of the respective parties hereto, such deposit to be held for the purpose of indemnifying the said The J. L. Mott Iron Works against any damages, costs, expenses or

payments in excess of fifty dollars which it may be compelled to pay in order to procure the conveyance of said one-seventh interest in said premises of which the said Loring Andrews, Jr., died seized, PROVIDED, HOWEVER, that the one-seventh part of the net rents of said premises accruing from and after the 1st day of April, 1880, and payable to the estate of said Loring Andrews, Jr., deceased, is not to be reckoned as forming a part of the sum paid for the purchase or conveyance of said one-seventh interest, said sum of five dollars to be applied whenever the said one-seventh interest has become vested in the said The J. L. Mott Iron Works, first, to reimbursing to it any payments made by it in excess of said sum of fifty dollars in the procuring the conveyance of said interest; and, secondly, the surplus, if any, remaining after such application to be paid over to the said Francis H. Weeks, Esq., as the attorney for the estate of the said Loring Andrews.

AND it is further covenanted and agreed that the rental to be paid by the said The J. L. Mott Iron Works for said one undivided one-seventh to the heirs or devisees of said Loring Andrews, Jr., deceased, shall be 5 per cent. upon fifty dollars from and after April 1st, 1880.

DE FOREST & WEEKS, [L. S.]
Attorneys for Vendors.

THE J. L. MOTT IRON WORKS, by
GEO. W. VAN SICLEN, [L. S.]
Attorney.

SIMPLE FORM OF CONTRACT.

THESE ARTICLES OF AGREEMENT made the fifteenth day of October, in the year one thousand eight hundred and eighty-five, between George H. Wallace, of the City, County and State of New York, party of the first part, and John A. Dermody, of the City of Brooklyn, County of Kings and State of New York, party of the second part, witnesseth:

The said party of the first part, in consideration of the sum of one thousand dollars to him duly paid, the receipt whereof is hereby acknowledged, hereby agrees to sell unto the said party of the second part, all that certain lot, piece or parcel of land, with the buildings thereon, situate in the Sixteenth Ward of the City of Brooklyn, and known as No. 45 Eighteenth street, and bounded and described as follows: Beginning on the northerly side of Eighteenth street, one hundred (100) feet westerly from the northwest corner of Eighteenth street and Eighth avenue, and running thence northerly and parallel to the avenue and part way through a party wall one hundred (100) feet, thence westerly and parallel to Eighteenth street twenty-two (22) feet, thence southerly and parallel to Eighth avenue and part way through a party wall one hundred (100) feet to Eighteenth street, and thence easterly along Eighteenth street twenty-two (22) feet to the point or place of beginning, together with all shades to the windows and also the refrigerator now in the house on said premises, for the consideration of twenty thousand dollars to be paid by the party of the second part in the manner and at the times hereinafter stated. And the said party of the second part hereby agrees to purchase said premises at the said consideration of twenty thousand dollars, and to pay the same as follows: Nine thousand dollars upon the fifteenth day of November, 1885, when the deed is to be delivered;

five thousand dollars in the mortgage held by the Broadway Savings Institution, now a lien on said premises, and which mortgage the party of the second part hereto shall assume and agree to pay as part of the aforesaid consideration; five thousand dollars in the purchase money bond and mortgage of the party of the second part upon the aforesaid premises, to bear date November 15th, 1885, and to contain a twenty-day interest clause, a ninety-day tax and assessment clause, and the usual insurance clause, together with the usual receiver's and warranty clauses; and one thousand dollars in the aforesaid sum paid as the consideration for this contract, which shall be allowed upon the consideration for said deed upon completion hereof by the party of the second part.

And the said party of the first part, on receiving such payments at the time and in the manner above mentioned, shall, at his own proper cost and expenses, execute, acknowledge and deliver to said party of the second part, or to his assigns, a proper deed containing a general warranty and the usual full covenants for the conveying and assuring to him or them, the fee simple of the said premises, free from all encumbrance, except the aforesaid mortgage of five thousand dollars now a lien on said premises, and except also an existing covenant against erection of buildings upon the front portion of said lot, and which deed shall be delivered on the fifteenth day of November, 1885, at twelve o'clock M., at the office of Mr. Geo. W. Van Siclen, No. 146 Broadway, in the City of New York. The risk of loss or damage by fire prior to the completion of this contract is hereby assumed by the party of the first part. The rents of the said premises shall be apportioned and allowed up to the day of taking title.

And it is hereby further agreed that in case either party hereto shall fail or refuse to carry out this contract or any part thereof by him to be performed, the party so failing shall and will pay to the other party, his executors, administrators or assigns, the sum of five hundred dollars, which sum is hereby declared fixed and agreed upon as the liquidated damages to be paid by the party so failing for his non-performance.

And the party of the first part hereby agrees to furnish the party of the second part on or before the 17th day of October, 1885, with an abstract of title of said premises and the searches appended thereto down to April 9th, 1879, when he purchased the same, or to pay towards the cost of an abstract and searches one hundred dollars.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

GEO. H. WALLACE. [L. S.]

JOHN A. DERMODY. [L. S.]

State of New York }
City and County of New York } ss:

On this fifteenth day of October, one thousand eight hundred and eighty-five, before me personally came George H. Wallace and John A. Dermody, to me known, and known to me to be the individuals described in and who executed the foregoing instrument, and they thereupon duly acknowledged to me that they had executed the same.

A. FRED. SILVERSTONE,
Notary Public, New York County.

A GOOD FORM FOR EXCHANGE.

AGREEMENT made and entered into the fourteenth day of November in the year one thousand eight hundred and eighty-five, between John Doe, of the town of Flushing, County of Queens and State of New York, party of the first part, and Richard Roe, of the City, County and State of New York, party of the second part, in manner following: The said party of the first part, in consideration of ten dollars duly paid by the party of the second part, the receipt whereof is hereby acknowledged, and also in consideration of the conveyance of the property hereinafter mentioned, belonging to the said party of the second part, doth hereby agree on his part, to give and grant unto the said party of the second part all that parcel of land situate, lying and being in said town of Flushing, lying on the westerly side of the highway between Flushing and Bayside, known as the Vleigh farm, bounded by land of George Parks on the north and by land of James Merritt on the south, containing forty acres more or less, together with the buildings and appurtenances, as the said premises are more fully described in the deed of the same from Arthur Powell and wife to the party of the first part hereto, dated July 8th, 1879, and recorded in Queens County Clerk's office.

And the said party of the second part, in consideration of the sum of ten dollars duly paid by the party of the first part to the second part, the receipt whereof is hereby acknowledged and also of the conveyance of the property and the consideration first above mentioned in exchange, and for the further consideration of eight thousand dollars in cash to be paid by the party of the first part at the time of the delivery of the deeds hereinafter mentioned, doth likewise agree on his part, to give and grant unto the said party of the first part all that lot, piece or parcel of land with the buildings thereon, situate in the Ninth Ward of the City of New York, known as No. 1046 Charles st, beginning on the northerly side of Charles street, etc., etc.

The parties to these presents mutually agree to execute, acknowledge and deliver, each to the other, or to their assigns, and at their own proper cost and expense, a proper deed or deeds for the conveying and assuring, each to the other, the fee simple of the property of each, above described, free from all encumbrances, of any name or nature whatever, except that the property on Charles street, New York City, is subject to a mortgage of $6,000 which the said John Doe shall assume and agree to pay, and which deeds shall be delivered and exchanged on the 14th day December, 1886, at 12 o'clock noon, at the office of Mr. Geo. W. Van Siclen, No. 146 Broadway, New York City. Each party hereto shall assume the risk of loss or damage by fire to his own premises hereby agreed to be exchanged by him, prior to the completion of this contract. Fifteen days' rent of the Charles street property, viz.: one hundred and twenty dollars, shall be allowed to the party of the first part for the balance of the month of November, 1885. And it is hereby further agreed that in case either party hereto shall fail to carry out his part of this agreement the party so failing shall pay to the other party the sum of three hundred dollars as and for liquidated damages for such failure. And each party hereto respectively agrees to forthwith deliver to the other his abstract of title and official searches that he obtained at the time he became owner of his said premises.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties. In witness whereof, etc.

[Acknowledgments].

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THE REAL PROPERTY LAW.

AN ACT

Relating to real property, constituting chapter forty-six of the general laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XLVI OF THE GENERAL LAWS.

The Real Property Law.

Article 1. Tenure of real property. (§§ 1-9.)
2. Creation and division of estates. (§§ 20-56.)
3. Uses and trusts. (§§ 70-93.)
4. Powers. (§§ 110-163.)
5. Dower. (§§ 170-187.)
6. Landlord and tenant. (§§ 190-202.)
7. Conveyances and mortgages. (§§ 205-234.)
8. Recording instruments affecting real property. (§§ 240-277.)
9. Descent of real property. (§§ 280-296.)
10. Laws repealed; when to take effect. (§§ 300-301.)

ARTICLE I.

TENURE OF REAL PROPERTY.

Section 1. Short title; definitions; effect.
2. Capacity to hold real property.
3. Capacity to transfer real property.
4. Deposition of resident alien.
5. When and how alien may acquire and transfer real property.
6. Effect of marriage with alien.
7. Title through alien.
8. Liabilities of alien holders of real property.
9. Heirs of patriotic Indian.

§ 1. Short title; definitions; effect.

This chapter shall be known as the real property law. The terms "real property" and "lands" as used in this chapter are coextensive in meaning with lands, tenements and hereditaments. This chapter does not alter or impair any vested estate, interest or right, nor alter or affect the construction of any conveyance, will or other instrument which has taken effect at any time before this chapter becomes a law.

§ 2. Capacity to hold real property.

A citizen of the United States is capable of holding real property within this state, and of taking the same by descent, devise or purchase.

§ 3. Capacity to transfer real property.

A person other than a minor, an idiot, or person of unsound mind, seized of or entitled to an estate or interest in real property, may transfer such estate or interest.

§ 4. Deposition of resident alien.

An alien who, pursuant to the laws of the United States, has declared his intention of becoming a citizen, and who is, and intends to remain, a resident thereof, may make a written deposition to such facts, before any officer authorized to take the acknowledgment or proof of deeds to entitle them to be recorded within the state. Such deposition must be certified by the officer before whom it is made, and may be filed in the office of the secretary of state and when so filed, must be recorded by him in a book kept for that purpose.

Such deposition shall be presumptive evidence of the facts therein contained.

§ 5. When and how alien may acquire and transfer real property.

An alien may, for a term of six years after filing the deposition described in the last preceding section, take, hold, convey and devise real property. If such deposition be filed, or such alien be admitted to citizenship, a grant, devise, contract or mortgage theretofore made to or by him is as valid and effectual as if made thereafter; provided, however, that a devise to an alien shall not be valid unless a deposition be filed by him, or he be admitted to citizenship, within one year after the death of the testator, or if the devisee is a minor, within one year after his majority. If a person who has filed such a deposition dies within six years thereafter, and before he is admitted to citizenship, his widow is entitled to dower in his real property, and if he dies intestate, his heirs or the persons who would otherwise answer to the description of heirs, inherit his real property, upon such persons being admitted to citizenship, or filing a deposition

in their own behalf, within one year after such death, or if minors, within one year after their majority. If an action or proceeding is commenced by the state to recover real property held by an alien, such action or proceeding shall be suspended upon the filing of such deposition, and the service of a certified copy thereof upon the attorney-general, and the payment of the costs to the time of such service.

§ 6. Effect of marriage with alien.

A woman who, being a citizen of the United States, marries an alien not entitled to hold real property in this state, may, notwithstanding such marriage, take by grant, will or descent, and hold, convey and devise real property within this state; and the descendants of such a woman who dies intestate, inherit her real property within this state, and any real property which she would have been entitled to take, by descent, if living; and such descendants may take real property by grant or devise from their mother or from any citizen to whom she would be an heir, may hold real property acquired under this section, and may convey and devise it to any person capable of holding the same.

§ 7. Title through alien.

The right, title or interest in or to real property in this state of any person entitled to hold the same can not be questioned or impeached by reason of the alienage of any person through whom such title may have been derived. Nothing in this section affects or impairs the right of any heir, devisee, mortgagee, or creditor by judgment or otherwise.

§ 8. Liabilities of alien holders of real property.

Every alien holding real property in this state is subject to duties, assessments, taxes and burdens as if he were a citizen of the state.

§ 9. Heirs of patriotic Indian.

The heirs of an Indian to whom real property was granted for military services rendered during the war of the revolution may take and hold such real property by descent as if they were citizens of the state at the time of the death of their ancestors. A conveyance of such real property to a citizen of this state, executed by such Indian or his heirs after March seventh, eighteen hundred and nine, is valid, if executed with the approval of the surveyor-general or state engineer and surveyor, indorsed thereupon.

ARTICLE II.

CREATION AND DIVISION OF ESTATES.

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§ 20. Enumeration of estates.

Estates in real property are divided into estates of inheritance, estates for life, estates for years, estates at will, and by sufferance.

§ 21. Estates in fee simple and fee simple absolute.

An estate of inheritance continues to be termed a fee simple, or fee, and, when not defeasible or conditional, a fee simple absolute, or an absolute fee.

§ 22. Estates tail abolished; remainders thereon.

Estates tail have been abolished; and every estate which would be adjudged a fee tail, according to the law of this state, as it existed before the twelfth day of July, seventeen hundred and eighty-two, shall be deemed a fee simple; and if no valid remainder be limited thereon, a fee simple absolute. Where a remainder in fee shall be limited on any estate which would be a fee tail, according to the law of this state, as it existed previous to such date, such remainder shall be valid, as a contingent limitation on a fee, and shall vest in possession on the death of the first taker, without issue living at the time of such death.

§ 23. Freeholds; chattels real; chattel interests.

Estates of inheritance and for life shall continue to be termed estates of freehold; estates for years are chattels real; and estates at will or by sufferance continue to be chattel interests, but not liable as such to sale on execution.

§ 24. When estate for life of third person is freehold, when chattel real.

An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee; after his death it shall be deemed a chattel real.

§ 25. Estates in possession and expectancy.

Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy. An estate which entitles the owner to immediate possession of the property, is an estate in possession. An estate, in which the right of possession is postponed to a future time, is an estate in expectancy.

§ 26. Enumeration of estates in expectancy.

All expectant estates, except such as are enumerated and defined in this article, have been abolished. Estates in expectancy are divided into,

1. Future estates; and
2. Reversions.

§ 27. Definition of future estates.

A future estate, is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time.

§ 28. Definition, remainder.

When a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

§ 29. Definition, reversion.

A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised.

§ 30. When future estates are vested; when contingent.

A future estate is either vested or contingent. It is vested, when there is a person in being, who would have an immediate right to the possession of the property, on the determination of all the intermediate or precedent estates. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain.

§ 31. Power of appointment not to prevent vesting.

The existence of an unexecuted power of appointment does not prevent the vesting of a future estate, limited in default of the execution of the power.

§ 32. Suspension of power of alienation.

The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation. by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; except that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, die under the age of twenty-one years, or on any other contingency by which the estate of such persons may be determined before they attain full age. For the purposes of this section a minority is deemed a part of a life and not an absolute term equal to the possible duration of such minority.

§ 33. Limitation of successive estates for life.

Successive estates for life shall not be limited, except to per-

sons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto, shall be void, and on the death of those persons, the remainder shall take effect, in the same manner as if no other life estates had been created.

§ 34. Remainders on estates for life of third person.

A remainder shall not be created on an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder be in fee; nor shall a remainder be created on such an estate in a term of years, unless it be for the whole residue of such term.

§ 35. When remainders to take effect if estate be for lives of more than two persons.

When a remainder is created on any such life estate, and more than two persons are named as the persons during whose lives the life estate shall continue, the remainder shall take effect on the death of the two persons first named, as if no other lives had been introduced.

§ 36. Contingent remainder on term of years.

A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which it is limited be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or on the termination thereof.

§ 37. Estate for life as remainder on term of years.

No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

§ 38. Meaning of heirs and issue in certain remainders.

Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue," shall be construed to mean heirs or issue, living at the death of the person named as ancestor.

§ 39. Limitations of chattels real.

All the provisions contained in this article, relative to future estates, apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

§ 40. Creation of future and contingent estates.

Subject to the provisions of this article, a freehold estate as well as a chattel real may be created to commence at a future day; an estate for life may be created in a term of years, and a

remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created expectant on the determination of a term of years; and a fee or other less estate, may be limited on a fee, on a contingency which, if it should occur, must happen within the period prescribed in this article.

§ 41. Future estates in the alternative.

Two or more future estates may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

§ 42. Future estate valid though contingency improbable.

A future estate, otherwise valid, shall not be void on the ground of the improbability of the contingency on which it is limited to take effect.

§ 43. Conditional limitations.

A remainder may be limited on a contingency, which, if it happens, will operate to abridge or determine the precedent estate; and every such remainder shall be a conditional limitation.

§ 44. When heirs of life tenant take as purchasers.

Where a remainder shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs, or heirs of the body, of such tenant for life, shall take as purchasers, by virtue of the remainder so limited to them.

§ 45. When remainder not limited on contingency defeating precedent estate, takes effect.

When a remainder on an estate for life or for years is not limited on the contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect, only on the death of the first taker, or the expiration by lapse of time of such term of years.

§ 46. Posthumous children.

Where a future estate is limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parents; and a future estate, dependent on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

§ 47. When expectant estates are defeated.

An expectant estate can not be defeated or barred by any transfer or other act of the owner of the intermediate or pre-

cedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender, merger or otherwise; but an expectant estate may be defeated in any manner, or by any act or means which the party creating such estate, in the creation thereof, has provided for or authorized. An expectant estate thus liable to be defeated shall not, on that ground, be adjudged void in its creation.

§ 48. Effect on valid remainders of determination of precedent estate before contingency.

A remainder valid in its creation shall not be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder was limited to take effect; should such contingency afterwards happen the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period.

§ 49. Qualities of expectant estates.

An expectant estate is descendible, devisable and alienable, in the same manner as an estate in possession.

§ 50. Dispositions of rents and profits.

A disposition of the rents and profits of real property to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this article, for future estates in real property.

§ 51. Accumulations.

All directions for the accumulation of the rents and profits of real property, except such as are allowed by statute, shall be void. An accumulation of rents and profits of real property, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real property as follows:

1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at or before the expiration of their minority.

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it must commence within the time permitted, by the provisions of this article, for the vesting of future estates, and during the minority of the beneficiaries, and shall terminate at or before the expiration of such minority.

3. If in either case such direction be for a longer term than during the minority of the beneficiaries it shall be void only as to the time beyond such minority.

§ 52. Anticipation of directed accumulation.

Where such rents and profits are directed to be accumulated for the benefit of a minor entitled to the expectant estate, and such minor is destitute of other sufficient means of support and education, the supreme court, at a special term, or, if such accumulation has been directed by will, the surrogate's court of the county in which such will has been admitted to probate, may, on the application of his general guardian, direct a suitable sum out of such rents and profits to be applied to his maintenance or education.

§ 53. Undisposed profits.

When, in consequence of a valid limitation of an expectant estate, there is a suspension of the power of alienation, or of the ownership, during the continuance of which the rents and profits are undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate.

§ 54. When expectant estates are deemed created.

Where an expectant estate is created by grant, the delivery of the grant, and, where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

§ 55. Estates in severalty, joint tenancy and in common.

Estates in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy and in common; the nature and properties of which respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

§ 56. When estate in common; when in join tenancy.

Every estate granted or devised to two or more persons in their own right, shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate vested in executors or trustees as such, shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested as to estates hereafter granted or devised.

ARTICLE III.

USES AND TRUSTS.

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90. Termination of trusts for the benefit of creditors.
91. Trust estate not to descend.
92. Resignation or removal of trustee and appointment of successor.
93. Grants and devises of real property for charitable purposes.

§ 70. Executed uses existing.

Every estate which is now held as a use, executed under any former statute of the state, is confirmed as a legal estate.

§ 71. Certain uses and trusts abolished.

Uses and trusts concerning real property, except as authorized and modified by this article, have been abolished; every estate or interest in real property is deemed a legal right, cognizable as such in the courts, except as otherwise prescribed in this chapter.

§ 72. When right to possession creates legal ownership.

Every person, who, by virtue of any grant, assignment or devise, is entitled both to the actual possession of real property, and to the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest; but this section does not divest the estate of the trustee in any trust existing on the first day of January, eighteen hundred and thirty, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

§ 73. Trustee of passive trust not to take.

Every disposition of real property, whether by deed or by devise, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to another to the use of, or in trust for, such person; and if made to any person to the use of, or in trust for another, no estate or interest, legal or equitable, vests in the trustee. But neither this section nor the preceding sections of this article shall extend to trusts arising, or resulting by implication of law, nor prevent or affect the creation of such express trusts as are authorized and defined in this chapter.

§ 74. Grant to one where consideration paid by another.

A grant of real property for a valuable consideration, to one person, the consideration being paid by another, is presumed fraudulent as against the creditors, at that time, of the person paying the consideration, and, unless a fraudulent intent is disproved, a trust results in favor of such creditors, to an extent necessary to satisfy their just demands; but the title vests in the grantee, and no use or trust results from the payment, to the person paying the consideration, or in his favor, unless the grantee either,

1. Takes the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration, or,

2. In violation of some trust, purchases the property so conveyed with money or property belonging to another.

§ 75. Bona fide purchasers protected.

An implied or resulting trust shall not be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration without notice of the trust.

§ 76. Purposes for which express trusts may be created.

An express trust may be created for one or more of the following purposes:

1. To sell real property for the benefit of creditors;

2. To sell, mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon;

3. To receive the rents and profits of real property, and apply them to the use of any person, during the life of that person, or for any shorter term, subject to the provisions of law relating thereto;

4. To receive the rents and profits of real property, and to accumulate the same for the purposes, and within the limits, prescribed by law.

§ 77. Certain devises to be deemed powers.

A devise of real property to an executor or other trustee, for the purpose of sale or mortgage, where the trustee is not also empowered to receive the rents and profits, shall not vest any estate in him; but the trust shall be valid as a power, and the real property shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

§ 78. Surplus income of trust property liable to creditors.

Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the beneficiary, shall be liable to the claims of his creditors in the same manner as other personal property, which can not be reached by execution.

§ 79. When an authorized trust is valid as a power.

Where an express trust relating to real property is created for any purpose not specified in the preceding sections of this article, no estate shall vest in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions of this chapter.

Where a trust is valid as a power, the real property to which the trust relates shall remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

§ 80. Trustee of express trust to have whole estate.

Except as otherwise prescribed in this chapter, an express trust, valid as such in its creation, shall vest in the trustee the legal estate, subject only to the execution of the trust, and the beneficiary shall not take any legal estate or interest in the property, but may enforce the performance of the trust.

§ 81. Qualification of last section.

The last section shall not prevent any person, creating a trust, from declaring to whom the real property, to which the trust relates, shall belong, in the event of the failure or termination of the trust, or from granting or devising the property, subject to the execution of the trust. Such a grantee or devisee shall have a legal estate in the property, as against all persons, except the trustees, and those lawfully claiming under him.

§ 82. Interest remaining in grantor of express trust.

Where an express trust is created, every legal estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to, the person creating the trust or his heirs.

§ 83. What trust interest may be alienated.

The right of a beneficiary of an express trust to receive rents and profits of real property, and apply them to the use of any person, can not be transferred by assignment or otherwise; but the right and interest of the beneficiary of any other trust may be transferred. Whenever a beneficiary in a trust for the receipt of the rents and profits of real property is entitled to a remainder in the whole or a part of the principal fund so held in trust subject to his beneficial estate for a life or lives, or a shorter term, he may release his interest in such rents and profits, and thereupon the estate of the trustee shall cease in that part of such principal fund to which such beneficiary has become entitled in remainder, and such trust estate merges in such remainder.

§ 84. Transferee of trust property protected.

When an express trust is created, but is not contained or declared in the conveyance to the trustee, the conveyance shall be deemed absolute as to the subsequent creditors of the trustee not having notice of the trust, and as to subsequent purchasers from the trustee, without notice and for a valuable consideration.

§ 85. When trustee may convey trust property.

If the trust is expressed in the instrument creating the estate, every sale, conveyance or other act of the trustee, in contravention of the trust, except as provided in this section, shall be

absolutely void. The supreme court, may, by order, on such terms and conditions as seem just and proper, authorize any such trustee to mortgage or sell such real property, or any part thereof, whenever it appears to the satisfaction of the court that it is for the best interest of such estate, or that it is necessary and for the benefit of the estate, to raise funds for the purpose of preserving and improving it; and whenever the interest of the trust estate in any real property is an undivided part or share thereof, the same may be sold, if it shall appear to the court to be for the best interest of such estate.

§ 86. When trustee may lease trust property.

A trustee appointed to hold real property during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to, or for, the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years, without application to the court. The supreme court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay at the end of the term, or renewed term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term.

If any such trustee has leased any such trust property before June fourth, eighteen hundred and ninety-five, for a longer term than five years, the supreme court, on the application of such trustee, may, by order, confirm such lease, and such order, on the entry thereof, shall be binding on all persons interested in the trust estate.

§ 87. Notice to beneficiary where trust property is conveyed, mortgaged or leased.

The supreme court shall not grant an order under either of the last two preceding sections, unless it appears to the satisfaction of such court that a written notice, stating the time and place of the application therefor, has been served upon the beneficiary of such trust property, at least eight days before the making thereof, if such beneficiary is an adult within the state; or if a minor, lunatic, person of unsound mind, habitual drunkard or absentee, until proof of the service on such person of such notice as the court, or a justice thereof, prescribes.

§ 88. Person paying money to trustee protected.

A person who shall actually and in good faith pay a sum of money to a trustee, which the trustee as such is authorized to

receive, shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by him from the trustee in consideration of the payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid.

§ 89. When estate of trustee ceases.

When the purpose for which an express trust is created ceases, the estate of the trustee shall also cease.

§ 90. Termination of trusts for the benefit of creditors.

Where an estate or interest in real property has heretofore vested or shall hereafter vest in the assignee or other trustee for the benefit of creditors, it shall cease at the expiration of twenty-five years from the time when the trust was created, except where a different limitation is contained in the instrument creating the trust, or is especially prescribed by law. The estate or interest remaining in the trustee or trustees shall thereon revert to the assignor, his heirs, devisee or assignee, as if the trust had not been created.

§ 91. Trust estate not to descend.

On the death of the last surviving or sole trustee of an express trust, the trust estate shall not descend to his heirs nor pass to his next of kin or personal representatives; but in the absence of a contrary direction on the part of the person creating the same, such trust, if unexecuted, shall vest in the supreme court, with all the powers and duties of the original trustee, and shall be executed by some person appointed for that purpose under the direction of the court, who shall not be appointed until the beneficiary thereof shall have been brought into court by such notice in such manner as the court or a justice thereof may direct.

§ 92. Resignation or removal of trustee and appointment of successor.

The supreme court has power, subject to the regulations established for the purpose in the general rules of practice:

1. On his application by petition or action, to accept the resignation of a trustee, and to discharge him from the trust on such terms as are just.

2. In an action brought, or on a petition presented, by any person interested in the trust, to remove a trustee who has violated or threatens to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who for any other cause shall be deemed to be an unsuitable person to execute the trust.

3. In case of the resignation or removal of a trustee, to appoint a new trustee in his place, and in the meantime, if there is no

acting trustee, to cause the trust to be executed by a receiver or other officer under its direction.

This section shall not apply to a trust arising or resulting by implication of law, nor where other provision is specially made by law, for the resignation or removal of a trustee or the appointment of a new trustee.

§ 93. Grants and devises of real property for charitable purposes.

A conveyance or devise of real property for religious, educational, charitable or benevolent uses, which is in other respects valid, is not to be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument making such conveyance or devise. If in such instrument, a trustee is named to execute the same, the legal title to the real property granted or devised shall vest in such trustee. If no person is named as trustee, the title to such real property vests in the supreme court, and such court shall have control thereof. The attorney-general shall represent the beneficiaries in such cases and enforce such trusts by proper proceedings.

ARTICLE IV.

POWERS.

Section 110. Effect of article.
111. Definition of a power.
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157. Disposition not void because too extensive.
158. Computation of term of suspension.
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161. Instrument affected by fraud.
162. Sections applicable to trust powers.

§ 110. Effect of article.

Powers, as they existed by law on the thirty-first day of December, eighteen hundred and twenty-nine, have been abolished. Hereafter the creation, construction and execution of powers, affecting real property, shall be subject to the provisions of this article; but this article does not extend to a simple power of attorney, to convey real property in the name, and for the benefit of the owner.

§ 111. Definition of a power.

A power is an authority to do an act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner, granting or reserving the power, might himself lawfully perform.

§ 112. Definitions of grantor, grantee.

The word "grantor" is used in this article, in connection with a power, as designating the person by whom the power is created, whether by grant or by devise; and the word "grantee" is so used as designating the person in whom the power is vested, whether by grant, devise or reservation.

§ 113. Division of powers.

A power, as authorized in this article, is either general or special, and either beneficial or in trust.

§ 114. General power.

A power is general, where it authorizes the transfer or encumbrance of a fee, by either a conveyance or a will of or a charge on the property embraced in the power, to any grantee whatever.

§ 115. Special power.

A power is special where either:

1. The persons or class of persons to whom the disposition of the property under the power is to be made are designated; or,

2. The power authorizes the transfer or encumbrance, by a conveyance, will or charge, of any estate less than a fee.

§ 116. Beneficial power.

A general or special power is beneficial, where no person, other than the grantee, has, by the term of its creation, any interest in its execution. A beneficial power, general or special, other than one of those specified and defined in this article, is void.

§ 117. General power in trust.

A general power is in trust, where any person or class of per-

sons, other than the grantee of the power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from its execution.

§ 118. Special power in trust.

A special power is in trust, where either:

1. The disposition or charge which it authorizes is limited to be made to a person or class of persons, other than the grantee of the power; or,

2. A person or class of persons, other than the grantee, is designated as entitled to any benefit, from the disposition or charge authorized by the power.

§ 119. Capacity to grant a power.

A person is not capable of granting a power, who is not, at the same time, capable of transferring an interest in the property to which the power relates.

§ 120. How power may be granted.

A power may be granted either:

1. By a suitable clause, contained in an instrument sufficient to pass an estate in the real property, to which the power relates; or,

2. By a devise contained in a will.

§ 121. Capacity to take and execute a power.

A power may be vested in any person capable in law of holding, but can not be exercised by a person not capable of transferring real property.

§ 122. Capacity of married woman to take power.

A general and beneficial power may be given to a married woman, to dispose, during her marriage, and without concurrence of her husband, of real property conveyed or devised to her in fee.

§ 123. Capacity to take a special and beneficial power.

A special and beneficial power may be granted:

1. To a married woman, to dispose, during the marriage, and without the concurrence of her husband, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

2. To a tenant for life, of the real property embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life; and such a power is valid to authorize a lease for that period but is void as to the excess.

§ 124. Reservation of a power.

The grantor in a conveyance may reserve to himself any

power, beneficial or in trust, which he might lawfully grant to another; and a power thus reserved, shall be subject to the provisions of this article, in the same manner as if granted to another.

§ 125. Effect of power to revoke.

Where the grantor in a conveyance reserves to himself for his own benefit, an absolute power of revocation, he is to be still deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

§ 126. Power to sell in a mortgage.

Where a power to sell real property is given to a mortgagee, or to the grantee in any other conveyance intended to secure the payment of money, the power is deemed a part of the security, and vests in, and may be executed by any person who, by assignment or otherwise, becomes entitled to the money so secured to be paid.

§ 127. When power is a lien.

A power is a lien or charge on the real property which it embraces, as against creditors, purchasers and encumbrancers in good faith and without notice, of or from a person having an estate, in the property only from the time the instrument containing the power is duly recorded As against all other persons, the power is a lien from the time the instrument in which it is contained takes effect.

§ 128. When power is irrevocable.

A power, whether beneficial or in trust, is irrevocable, unless an authority to revoke it is granted or reserved in the instrument creating the power.

§ 129. When estate for life or years is changed into a fee.

Where an absolute power of disposition, not accompanied by a trust, is given to the owner of a particular estate for life or for years, such estate is changed into a fee absolute in respect to the rights of creditors, purchasers and encumbrancers, but subject to any future estates limited thereon, in case the power of absolute disposition is not executed, and the property is not sold for the satisfaction of debts.

§ 130. Certain powers create a fee.

Where a like power of disposition is given to a person to whom no particular estate is limited, such person also takes a fee, subject to any future estates that may be limited thereon, but absolute in respect to creditors, purchasers and encumbrancers.

§ 131. When grantee of power has absolute fee.

Where such a power of disposition is given, and no remainder

is limited on the estate of the grantee of the power, such grantee is entitled to an absolute fee.

§ 132. Effect of power to devise in certain cases.

Where a general and beneficial power to devise the inheritance is given to a tenant for life, or for years, such tenant is deemed to possess an absolute power of disposition within the meaning of and subject to the provisions of the last three sections.

§ 133. When power of disposition absolute.

Every power of disposition by means of which the grantee is enabled, in his lifetime, to dispose of the entire fee for his own benefit, is deemed absolute.

§ 134. Power subject to condition.

A general and beneficial power may be created subject to a condition precedent or subsequent, and until the power becomes absolutely vested it is not subject to any provision of the last four sections.

§ 135. Power of life tenant to make leases.

The power of a tenant for life to make leases is not assignable as a separate interest, but is annexed to his estate, and passes by a grant of such estate unless specially excepted. If so excepted, it is extinguished.

Such a power may be released by the tenant to a person entitled to an expectant estate in the property, and shall thereupon be extinguished.

§ 136. Effect of mortgage by grantee.

A mortgage executed by a tenant for life, having a power to make leases, does not extinguish or suspend the power; but the power is bound by the mortgage in the same manner as the real property embraced therein, and the effects on the power of such lien by mortgage are:

1. That the mortgagee is entitled to an execution of the power so far as the satisfaction of his debt requires; and,

2. That any subsequent estate, created by the owner, in execution of the power, becomes subject to the mortgage as if in terms embraced therein.

§ 137. When a trust power is imperative.

A trust power, unless its execution or nonexecution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled for the benefit of the person interested. A trust power does not cease to be imperative where the grantee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.

§ 138. Distribution when more than one beneficiary.

Where a disposition under a power is directed to be made to, among, or between, two or more persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion; but when the terms of the power import that the estate or fund is to be distributed among the persons so designated, in such manner or proportions as the trustee of the power thinks proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others.

§ 139. Beneficial power subject to creditors.

A special and beneficial power is liable to the claims of creditors in the same manner as other interests that can not be reached by execution; and the execution of the power may be adjudged for the benefit of the creditors entitled.

§ 140. Execution of power on death of trustee.

If the trustee of a power, with the right of selection, dies leaving the power unexecuted, its execution must be adjudged for the benefit, equally, of all the persons designated as beneficiaries of the trust.

§ 141. When power devolves on court.

Where a power in trust is created by will, and the testator has omitted to designate by whom the power is to be executed, its execution devolves on the supreme court.

§ 142. When creditors may compel execution of trust power.

The execution, wholly or partly, of a trust power may be adjudged for the benefit of the creditors or assignees of a person entitled as a beneficiary of the trust, to compel its execution, where his interest is assignable.

§ 143. Defective execution of trust power.

Where the execution of a power in trust is defective, wholly or partly, under the provisions of this article, its proper execution may be adjudged in favor of the person designated as the beneficiary of the trust.

§ 144. Effect of insolvent assignment.

A beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass, respectively, to a trustee or committee of the estate of the person in whom the power or interest is vested, or an assignee for the benefit of creditors.

§ 145. How power must be executed.

A power can be executed only by a written instrument, which would be sufficient to pass the estate, or interest, intended to pass under the power, if the person executing the power were the actual owner.

§ 146. Execution by survivors.

Where a power is vested in two or more persons, all must unite in its execution; but if before its execution, one or more of such persons dies, the power may be executed by the survivor or survivors.

§ 147. Execution of power to dispose by devise.

Where a power to dispose of real property is confined to a disposition by devise or will, the instrument must be a written will, executed as required by law.

§ 148. Execution of power to dispose by grant.

Where a power is confined to a disposition by grant, it can not be executed by will, although the disposition is not intended to take effect until after the death of the person executing the power.

§ 149. When direction by grantor does not render power void.

Where the grantor of a power has directed or authorized it to be executed by an instrument not sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the provisions of this article.

§ 150. When directions by grantor need not be followed.

Where the grantor of a power has directed any formality to be observed in its execution, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formality is not necessary to the valid execution of the power.

§ 151. Nominal conditions may be disregarded.

Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

§ 152. Intent of grantor to be observed.

Except as provided in this article, the intentions of the grantor of a power as to the manner, time and conditions of its execution must be observed; subject to the power of the supreme court, to supply a defective execution as provided in this article.

§ 153. Consent of grantor or third person to execution of power.

Where the consent of the grantor or a third person to the execution of a power is requisite, such consent shall be expressed

in the instrument by which the power is executed, or in a written certificate thereon. In the first case, the instrument of execution, in the second, the certificate, must be subscribed by the person whose consent is necessary; and to entitle the instrument to be recorded, such signature must be acknowledged or proved and certified in like manner as a deed to be recorded.

§ 154. When all must consent.

Where the consent of two or more persons to the execution of a power is requisite, all must consent thereto; but if, before its execution, one or more of them die, the consent of the survivor or survivors is sufficient, unless otherwise prescribed by the terms of the power.

§ 155. Omission to recite power.

An instrument executed by the grantee of a power, conveying an estate or creating a charge, which he would have no right to convey or create, except by virtue of the power, shall be deemed a valid execution of the power, although the power be not recited or referred to therein.

§ 156. When devise operates as an execution of the power.

Real property embraced in a power to devise passes by a will purporting to convey all the real property of the testator, unless the intent that the will is not to operate as an execution of the power, appears, either expressly or by necessary implication.

§ 157. Disposition not void because too extensive.

A disposition or charge by virtue of a power is not void on the ground that it is more extensive than was authorized by the power; but an estate or interest so created, so far as embraced by the terms of the power, is valid.

§ 158. Computation of term of suspension.

The period during which the absolute right of alienation may be suspended, by an instrument in execution of a power must be computed, not from the date of such instrument, but from the time of the creation of the power.

§ 159. Capacity to take under a power.

An estate or interest can not be given or limited to any person, by an instrument in execution of a power, unless it would have been valid, if given or limited at the time of the creation of the power.

§ 160. Purchase under defective execution.

A purchaser for a valuable consideration, claiming under a defective execution of a power, is entitled to the same relief as a similar purchaser, claiming under a defective conveyance from an actual owner.

§ 161. Instrument affected by fraud.

An instrument in execution of a power is affected by fraud, in the same manner as a conveyance or will, executed by an owner or by a trustee.

§ 162. Sections applicable to trust powers.

Sections ninety-one to ninety-three of this chapter, both inclusive, in relation to express trust estates, and the trustee thereof, apply equally to trust powers, however created, and to the grantees of such powers.

ARTICLE V.

DOWER.

Section 170. Dower.
171. Dower in lands exchanged.
172. Dower in lands mortgaged before marriage.
173. Dower in lands mortgaged for purchase money.
174. Surplus proceeds of sale under purchase money mortgages.
175. Widow of mortgagee not endowed.
176. When dower barred by misconduct.
177. When dower barred by jointure.
178. When dower barred by pecuniary provisions.
179. When widow to elect between jointure and dower.
180. Election between devise and dower.
181. When deemed to have elected.
182. When provision in lieu of dower is forfeited.
183. Effect of acts of husband.
184. Widow's quarantine.
185. Widow may bequeath crop.
186. Divorced woman may release dower.
187. Married woman may release dower by attorney.

§ 170. Dower.

A widow shall be endowed of the third part of all ther lands whereof her husband was seized of an estate of inheritance, at any time during the marriage.

§ 171. Dower in lands exchanged.

If a husband seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but she must make her election, to be endowed of the lands given, or of those taken, in exchange; and if her election be not evinced by the commencement of an action to recover her dower of the lands given in exchange within one year after the death of her husband, she is deemed to have elected to take her dower of the lands received in exchange.

§ 172. Dower in lands mortgaged before marriage.

Where a person seized of an estate of inheritance in lands, executes a mortgage thereof, before marriage, his widow is, nevertheless, entitled to dower of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

§ 173. Dower in lands mortgaged for purchase-money.

Where a husband purchases lands during the marriage, and at the same time mortgages his estate in those lands to secure the payment of the purchase-money, his widow is not entitled to dower of those lands, as against the mortgagee or those claiming under him, although she did not unite in the mortgage. She is entitled to her dower as against every other person.

§ 174. Surplus proceeds of sale, under purchase-money mortgages.

Where, in a case specified in the last section, the mortgagee, or a person claiming under him, causes the land mortgaged to be sold, after the death of the husband, either under a power of sale contained in the mortgage, or by virtue of a judgment in an action to foreclose the mortgage, and any surplus remains, after payment of the money due on the mortgage and the costs and charges of the sale, the widow is nevertheless entitled to the interest or income of one-third part of the surplus for her life, as her dower.

§ 175. Widow of mortgagee not endowed.

A widow shall not be endowed of the lands conveyed to her husband by way of mortgage, unless he acquires an absolute estate therein, during the marriage.

§ 176. When dower barred by misconduct.

In case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

§ 177. When dower barred by jointure.

Where an estate in real property is conveyed to a person and his intended wife, or to the intended wife alone, or to a person in trust for them or for the intended wife alone, for the purpose of creating a jointure for her, and with her assent, the jointure bars her right or claim of dower in all the lands of the husband. The assent of the wife to such a jointure is evidenced, if she be of full age, by her becoming a party to the conveyance by which it is settled; if she be a minor, by her joining with her father or guardian in that conveyance.

§ 178. When dower barred by pecuniary provisions.

Any pecuniary provision, made for the benefit of an intended wife and in lieu of dower, if assented to by her as prescribed in the last section, bars her right or claim of dower in all lands of her husband.

§ 179. When widow to elect between jointure and dower.

If, before the marriage, but without her assent, or, if after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision is made for her, in lieu of dower, she must make her election whether she will take the jointure or pecuniary provision, or be endowed of the lands of her husband; but she is not entitled to both.

§ 180. Election between devise and dower.

If real property is devised to a woman, or a pecuniary or other provision is made for her by will in lieu of her dower, she must make her election whether she will take the property so devised, or the provision so made, or be endowed of the lands of her husband; but she is not entitled to both.

§ 181. When deemed to have elected.

Where a woman is entitled to an election, as prescribed in either of the last two sections, she is deemed to have elected to take the jointure, devise or pecuniary provision, unless within one year after the death of her husband she enters upon the lands assigned to her for her dower, or commences an action for her dower. But, during such period of one year after the death of her said husband, her time to make such election may be enlarged by the order of any court competent to pass on the accounts of executors, administrators or testamentary trustees, or to admeasure dower, on an affidavit showing the pendency of a proceeding to contest the probate of the will containing such jointure, devise or pecuniary provision, or of an action to construe or set aside such will, or that the amount of claims against the estate of the testator can not be ascertained within the period so limited, or other reasonable cause, and on notice given to such persons, and in such manner, as such court may

direct. Such order shall be indexed and recorded in the same manner as a notice of pendency of action in the office of the clerk of each county wherein the real property or a portion thereof affected thereby is situated.

§ 182. When provision in lieu of dower is forfeited.

Every jointure, devise and pecuniary provision in lieu of dower is forfeited by the woman for whose benefit it is made in a case in which she would forfeit her dower; and on such forfeiture, an estate so conveyed for jointure, or devised, or a pecuniary provision so made, immediately vests in the person or legal representatives of the person in whom they would have vested on the determination of her interest therein, by her death.

§ 183. Effect of acts of husband.

An act, deed, or conveyance, executed or performed by the husband without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the contingent right of dower of a married woman, or a judgment or decree confessed by or recovered against him, or any laches, default, covin or crime of a husband, does not prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof.

§ 184. Widow's quarantine.

A widow may remain in the chief house of her husband forty days after his death, whether her dower is sooner assigned to her or not, without being liable to any rent for the same; and in the meantime she may have her reasonable sustenance out of the estate of her husband.

§ 185. Widow may bequeath a crop.

A woman may bequeath a crop in the ground of land held by her in dower.

§ 186. Divorced woman may release dower.

A woman who is divorced from her husband, whether such divorce be absolute or limited, or granted in his or her favor, by any court of competent jurisdiction, may release to him, by an instrument in writing, sufficient to pass title to real estate, her inchoate right of dower in any specific real property theretofore owned by him, or generally in all such real property, and such as he shall thereafter acquire.

§ 187. Married woman may release dower by attorney.

A married woman of full age may release her inchoate right of dower in real property by attorney in fact in any case where she can personally release the same.

ARTICLE VI.

LANDLORD AND TENANT.

Section 190. Action for use and occupation.
191. Rent due on life leases recoverable.
192. When rent is apportionable.
193. Rights where property or lease is transferred.
194. Attornment by tenant.
195. Notice of action adverse to possession of tenant.
196. Effect of renewal on sub-lease.
197. When tenant may surrender premises.
198. Termination of tenancies at will or by sufferance, by notice.
199. Liability of tenant holding over after giving notice of intention to quit.
200. Liability of tenant holding over after giving notice to quit.
201. Liability of landlord where premises are occupied for unlawful purpose.
202. Duration of certain agreements in New York.

§ 190. Action for use and occupation.

The landlord may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement, not made by deed; and a parol lease or other agreement may be used as evidence of the amount to which he is entitled.

§ 191. Rent due on life leases recoverable.

Rent due on a lease for life or lives, is recoverable by action, as well after as before the death of the person on whose life the rent depends, and in the same manner as rent due on a lease for years.

§ 192. When rent is apportionable.

Where a tenant for life, who shall have demised the real property, dies before the first rent day, or between two rent days, his executor or administrator may recover the proportion of rent which accrued to him before his death.

§ 193. Rights where property or lease is transferred.

The grantee of leased real property, or of a reversion thereof, or of any rent, the devisee or assignee of the lessor of such a lease, or the heir or personal representative of either of them, has the same remedies, by entry, action or otherwise, for the nonperformance of any agreement contained in the assigned lease for the recovery of rent, for the doing of any waste, or for other cause of forfeiture as his grantor or lessor had, or would have had, if the reversion had remained in him. A lessee of real property, his assignee or personal representative, has the same remedy against the lessor, his grantee or assignee, or the representative of either, for the breach of an agreement contained in the lease, that the lessee might have had against his immediate lessor, except a covenant against incumbrances or relating to the title or possession of the premises leased. This section applies as well to a grant or lease in fee, reserving rent, as to a lease for life or for years; but not to a deed of conveyance in fee, made before the ninth day of April, eighteen hundred and five, or after the fourteenth day of April, eighteen hundred and sixty.

§ 194. Attornment by tenant.

The attornment of a tenant to a stranger is absolutely void, and does not in any way affect the possession of the landlord unless made either:

1. With the consent of the landlord; or,

2. Pursuant to or in consequence of a judgment, order, or decree of a court of competent jurisdiction; or,

3. To a mortgagee, after the mortgage has become forfeited.

§ 195. Notice of action adverse to possession of tenant.

Where a process or summons in an action to recover the real property occupied by him, or the possession thereof, is served

upon a tenant, he must forthwith give notice thereof to his landlord; otherwise he forfeits the value of three years' rent of such property, to the landlord or other person of whom he holds.

§ 196. Effect of renewal on sub-lease.

The surrender of an under-lease is not requisite to the validity of the surrender of the original lease, where a new lease is given by the chief landlord. Such a surrender and renewal do not impair any right or interest of the chief landlord, his lessee or the holder of an under-lease, under the original lease; including the chief landlord's remedy by entry, for the rent or duties secured by the new lease, not exceeding the rent and duties reserved in the original lease surrendered.

§ 197. When tenant may surrender premises.

Where any building, which is leased or occupied, is destroyed or so injured by the elements, or any other cause as to be untenantable, and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his fault or neglect, quit and surrender possession of the leasehold premises, and of the land so leased or occupied; and he is not liable to pay to the lessor or owner, rent for the time subsequent to the surrender.

§ 198. Termination of tenancies at will or by sufferance by notice.

A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, requiring him to remove from the premises; which notice must be served, either by delivering to the tenant or to a person of suitable age and discretion, residing upon the premises, or if neither the tenant nor such a person can be found, by affixing it upon a conspicuous part of the premises, where it may be conveniently read. At the expiration of thirty days after the service of such notice, the landlord may re-enter, maintain ejectment, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.

§ 199. Liability of tenant holding over after giving notice of intention to quit.

If a tenant gives notice of his intention to quit the premises held by him, and does not accordingly deliver up the possession thereof, at the time specified in such notice, he or his personal representatives must, so long as he continues in possession, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be recovered at the same time, and in the same manner, as the single rent.

§ 200. Liability of tenant holding over after giving notice to quit.

Where, on the termination of an estate for life, or for years, the person entitled to the possession demands the same, and serves, in the same manner as for the termination of a tenancy at will, a written notice to quit, if the tenant, or any person in possession under him, or by collusion with him, willfully holds over, after the expiration of thirty days from such service, he must pay to the person so kept out of possession, or his representatives, at the rate of double the yearly value of the property detained, for the time while he so detains the same, together with all damages incurred by the person so kept out by reason of such detention. There is no equitable defense or relief against a demand accrued, or a recovery had, under this section.

§ 201. Liability of landlord where premises are occupied for unlawful purpose.

The owner of real property, knowingly leasing or giving possession of the same to be used or occupied, wholly or partly, for any unlawful trade, manufacture or business, or knowingly permitting the same to be so used, is liable severally, and also jointly with one or more of the tenants or occupants thereof, for any damage resulting from such unlawful use, occupancy, trade, manufacture or business.

§ 202. Duration of certain agreements in New York.

An agreement, for the occupation of real property in the city of New York, which shall not particularly specify the duration of the occupation, shall be deemed to continue until the first day of May, next after the possession commences under the agreement; and rent thereunder is payable at the usual quarter days, for the payment of rent in that city, unless otherwise expressed in the agreement.

ARTICLE VII.

CONVEYANCES AND MORTGAGES.

Section 205. Definitions and use of terms.
206. Livery of seizin abolished.
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231. Conveyances with power to revoke, determine or alter.
232. Disaffirmance of fraudulent act by executor and others.
233. When remainderman may pay interest owed by life tenant.
234. Powers of courts of equity not abridged.

§ 205. Definitions and use of terms.

The term "heirs," or other words of inheritance, are not requisite to create or convey an estate in fee. The term "conveyance," as used in this article, includes every instrument, in writing, except a will, by which any estate or interest in real property is created, transferred, assigned or surrendered. Every instrument creating, transferring, assigning or surrendering an estate or interest in real property must be construed according to the intent of the parties, so far as such intent can be gathered from the whole instrument. The terms "estate" and "interest in real property," include every such estate and interest, freehold or chattel, legal or equitable, present or future, vested or contingent.

§ 206. Livery of seizin abolished.

The conveyance of real property by feoffment, with livery of seizin, has been abolished.

§ 207. When written conveyance necessary.

An estate or interest in real property, other than a lease for a term not exceeding one year, or any trust or power, over or concerning real property, or in any manner relating thereto, can not be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. But this section does not affect the power of a testator in the disposition of his real property by will; nor prevent any trust from arising or being extinguished by implication or operation of law, nor any declaration of trust from being proved by a writing subscribed by the person declaring the same.

§ 208. Grant of fee or freehold.

A grant in fee or of a freehold estate, must be subscribed by the person from whom the estate or interest conveyed is intended to pass, or by his lawful agent. If not duly acknowledged before its delivery, according to the provisions of this chapter, its execution and delivery must be attested by at least one witness, or, if not so attested, it does not take effect as against a subsequent purchaser or encumbrancer until so acknowledged.

§ 209. When grant takes effect.

A grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law, now in force, in respect to the delivery of deeds, apply to grants hereafter executed.

§ 210. Estate which passes by grant or devise.

A grant or devise of real property passes all the estate or interest of the grantor or testator unless the intent to pass a less estate or interest appears by the express terms of such grant or devise or by necessary implication therefrom. A greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deed; except that every grant is conclusive against the grantor and his heirs claiming from him by descent, and as against a subsequent purchaser or encumbrancer from such grantor, or from such heirs claiming as such, other than a subsequent purchaser or encumbrancer, in good faith and for a valuable consideration, who acquires a superior title by a conveyance that has been first duly recorded.

§ 211. Certain deeds declared grants.

Deeds of bargain and sale, and of lease and release, may continue to be used; and are to be deemed grants, subject to all the provisions of law in relation thereto.

§ 212. Conveyance by tenant for life or years of greater estate than possessed.

A conveyance made by a tenant for life or years, of a greater estate than he possesses, or can lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the title, estate or interest which such tenant can lawfully convey.

§ 213. Effect of conveyance where property is leased.

An attornment to a grantee is not requisite to the validity of a conveyance of real property occupied by a tenant, or of the rents or profits thereof, or any other interest therein. But the payment of rent to a grantor, by his tenant, before notice of the conveyance, binds the grantee; and the tenant is not liable to such grantee, before such notice, for the breach of any condition of the lease.

§ 214. Covenants in mortgages.

A mortgage of real property does not imply a covenant for the payment of the sum intended to be secured; and where such covenant is not expressed in the mortgage, or a bond or other separate instrument to secure such payment, has not been given, the remedies of the mortgagee are confined to the property mentioned in the mortgage.

§ 215. Mortgages on real property inherited or devised.

Where real property, subject to a mortgage executed by any ancestor or testator, descends to an heir, or passes to a devisee, such heir or devisee must satisfy and discharge the mortgage out of his own property, without resorting to the executor or ad-

ministrator of his ancestor or testator, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid.

§ 216. Covenants not implied.

A covenant is not implied in a conveyance of real property, whether the conveyance contains any special covenant or not.

§ 217. Lineal and collateral warranties abolished.

Lineal and collateral warranties, with all their incidents, have been abolished; but the heirs and devisees of a person, who has made a covenant or agreement, are answerable thereon, to the extent of the real property descended or devised to them, in the cases and in the manner prescribed by law.

§ 218. Construction of covenants in grants of freehold interests.

In grants of freehold interests in real property, the following or similar covenants must be construed as follows:

1. Seizin.—A covenant that the grantor "is seized of the said premises (described) in fee simple, and has good right to convey the same," must be construed as meaning that such grantor, at the time of the execution and delivery of the conveyance, is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises thereby conveyed, with the tenements, hereditaments and appurtenances thereto belonging, and has good right, full power and lawful authority to grant and convey the same by the said conveyance.

2. Quiet enjoyment.—A covenant that the grantee "shall quietly enjoy the said premises," must be construed as meaning that such grantee, his heirs, successors and assigns, shall and may, at all times thereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the grantor, his heirs, successors or assigns, or any person or persons lawfully claiming or to claim the same.

3. Freedom from encumbrances.—A covenant "that the said premises are free from encumbrances," must be construed as meaning that such premises are free, clear, discharged and unencumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and encumbrances, of what nature or kind soever.

4. Further assurance.—A covenant that the grantor will "execute or procure any further necessary assurance of the title to said premises," must be construed as meaning that the grantor and his heirs, or successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right,

title, or interest of, in, or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges of the grantee, his heirs, successors and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises thereby granted or so intended to be, in and to the grantee, his heirs, successors and assigns forever, as by the grantee, his heirs, successors or assigns, or his or their counsel learned in the law, shall be reasonably advised or required.

5. Warranty of title.—A covenant that the grantor "will for ever warrant the title" to the said premises, must be construed as meaning that the grantor and his heirs, or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors and assigns, against the grantor and his heirs or successors, and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

6. Grantor has not encumbered.—A covenant that the grantor "has not done or suffered anything whereby the said premises have been encumbered," must be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means wherof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever.

§ 219. Construction of covenants in mortgages and bonds.

In mortgages of real property, and in bonds secured thereby, the following or similar covenants must be construed as follows:

1. Agreement that whole sum shall become due.—The words "and it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of interest for..... days, or after default in the payment of any tax or assessment for ..... days, after notice and demand," must be construed as meaning that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due or payable, and should the said interest remain unpaid and in arrear for the space of ..... days, or such tax or assessment remain un-

paid and in arrear for ..... days after written notice by the mortgagee or obligee, his executors, administrators, successors or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors or assigns, become and be due and payable immediately thereafter although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding.

2. In default of payment, mortgagee to have power to sell.—A covenant that the mortgagor "will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee shall have power to sell the premises therein described, according to law," must be construed as meaning that the mortgagor for himself, his heirs, executors and administrators or successors, doth covenant and agree to pay to the mortgagee, his executors, administrators, successors and assigns, the principal sum of money secured by said mortgage, and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the said principal sum or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the mortgagee, his executors, administrators or successors to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors or assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the mortgagor for that purpose duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple (or otherwise, as the case may be) and out of the money arising from such sale, to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money, if any there shall be, unto the mortgagor, his heirs, executors, administrators, successors or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors and assigns, and against all other persons claiming or to claim the premises, or any part thereof by, from or under him, them or any of them.

3. Mortgagor to keep buildings insured.—A covenant "that the

mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," must be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire, to an amount and in a company to be approved by the mortgagee, and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors or assigns, so and in such manner and form that he and they shall at all time and times, until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns, may make such insurance from year to year, in a sum not exceeding the principal sum for the purposes aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be collectible thereupon and thereby in like manner as the principal moneys, and in default of such payment by the mortgagor, his heirs, executors, administrators, successors or assigns, or of assignment and delivery of policies as aforesaid the whole of the principal sum and interest secured by the mortgage shall, at the option of the mortgagee, his executors, administrators, successors or assigns, immediately become due and payable.

4. Mortgagor to give further assurance of title.—A covenant that the mortgagor "will execute any further necessary assurance of the title to said premises, and will forever warrant said title," must be construed as meaning that the mortgagor shall and will make, execute, acknowledge and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more fully and effectually conveying the premises by the mortgage described, and thereby granted or intended so to be, unto the said mortgagee, his executors, administrators, successors or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title or interest therein, under the said indenture of mortgage, or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him will warrant and defend.

§ 220. Construction of grant of appurtenances and of all the rights and estate of grantor.

In any grant or mortgage of freehold interests in real estate, the words, "together with the appurtenances and all the estate and rights of the grantor in and to said premises," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, curtesy, and right of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of the said grantor of, in and to the said granted premises and every part and parcel thereof, with the appurtenances.

§ 221. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.

In any deed by an executor of, or trustee under a will, the words "together with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of, in and to the said granted premises, and every part and parcel thereof, with the appurtenances.

§ 222. Covenants to bind representatives of grantor and mortgagor and enure to benefit of whom.

All covenants contained in any grant or mortgage of real estate bind the heirs, executors, administrators, successors and assigns, of the grantor or mortgagor, and enure to the benefit of the heirs, executors, administrators, successors and assigns of the grantee or mortgagee in the same manner and to the same extent, and with like effect as if such heirs, executors, administrators, successors and assigns were so named in such covenants, unless otherwise in said grant of mortgage expressly provided.

§ 223. Short forms of deeds and mortgages.

The use of the following forms of instruments for the conveyance and mortgage of real property is lawful, but this section does not prevent or invalidate the use of other forms:

SCHEDULE A.

DEED WITH FULL COVENANTS.

This indenture, made the.....day of....., in the year eighteen hundred and....., between..... of (insert residence) of the first part, and..... of (insert residence) of the second part.

Witnesseth, that the said party of the first part, in consideration of ..... dollars lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part doth covenant with said party of the second part as follows:

First. That the party of the first part is seized of said premises in fee simple, and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from encumbrances.

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the party of the first part will forever warrant the title to said premises.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE B.

EXECUTOR'S DEED.

This indenture, made the.....day of ....., eighteen hundred and ..... between ..... as executor of the last will and testament of ....., late of ....., deceased, of the first part, and ....., of the second part, witnesseth:

That the said party of the first part, by virtue of the power and authority to him given in and by the said last will and

testament, and in consideration of ..... dollars, lawful money of the United States, paid by the said party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description) together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the said party of the first part has or has power to dispose of, whether individually, or by virtue of said will or otherwise.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part covenants with said party of the second part that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE C.

MORTGAGE.

This indenture, made the ..... day of ....., in the year eighteen hundred and ....., between ..... of ....., party of the first part, and ..... of ....., party of the second part

Whereas, the said ..... is justly indebted to the said party of the second part in the sum of ..... dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of ..... dollars, on the ..... day of ....., eighteen hundred and ....., and the interest thereon, to be computed from ..... at the rate of ..... per centum per annum and to be paid .....

It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of interest, taxes or assessments, as hereinafter provided.

Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation,

with interest thereon, and also for and in consideration of one dollar, paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or successors) and assigns forever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever.

Provided always, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said party of the first part covenants with the party of the second part as follows:

1. That the party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described according to law.

2. That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

3. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of interest for ....days, or after default in the payment of any tax or assessment for ..... days, after notice and demand.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

In the presence of:

§ 224. When contract to lease or sell void.

A contract for the leasing for a longer period than one year, or for the sale of any real property, or an interest therein, is void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the lessor or grantor, or by his lawfully authorized agent.

§ 225. Effect of grant or mortgage of real property adversely possessed.

A grant of real property is absolutely void, if at the time of the delivery thereof, such property is in the actual possession of a person claiming under a title adverse to that of the grantor; but such possession does not prevent the mortgaging of such property, and such mortgage, if duly recorded, binds the property from the time the possession thereof is recovered by the mortgagor or his representatives, and has preference over any judgment or other instrument, subsequent to the recording thereof; and if there are two or more such mortgages, they severally have preference according to the time of recording thereof, respectively.

§ 226. Conveyances with intent to defraud purchasers and encumbrancers void.

A conveyance of an estate or interest in real property, or the rents and profits thereof, and every charge thereon, made or created with intent to defraud prior or subsequent purchasers or encumbrancers, for a valuable consideration, of the same real property, rents or profits, is void as against such purchasers and encumbrancers. Such a conveyance or charge shall not be deemed fraudulent in favor of a subsequent purchaser or encumbrancer, who, at the time of his purchase or encumbrance, has actual or legal notice thereof, unless it appears that the grantee in the conveyance, or the person to be benefited by the charge was privy to the fraud intended.

§ 227. Conveyances with intent to defraud creditors void.

A conveyance or assignment in writing or otherwise, of an estate, interest, or existing trust in real property, or the rents or profits issuing therefrom, or a charge on real property, or on the rents or profits thereof, made with the intent to hinder, delay or defraud creditors, or other persons, of their lawful suits, damages, forfeitures, debts or demands, or a bond or other evidence of debt given, suit commenced or decree or judgment suffered, with the like intent, is void as against every person so hindered, delayed or defrauded.

§ 228. Conveyances void as to creditors, purchasers and encumbrancers, void as to heirs and assigns.

A conveyance, charge, instrument or proceeding, declared by

this article to be void as against creditors, purchasers or encumbrancers, is equally void as against their heirs, successors, personal representatives or assigns.

§ 229. Fraudulent intent, question of fact.

The question of fraudulent intent in a case arising under this article, shall be deemed a question of fact and not of law; and a conveyance or charge shall not be adjudged fraudulent as against creditors, purchasers or encumbrancers, solely on the ground that it was not founded on a valuable consideration.

§ 230. Rights of purchaser or encumbrancer for valuable consideration protected.

This article does not in any manner affect or impair the title of a purchaser or encumbrancer for a valuable consideration, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

§ 231. Conveyances with power to revoke, determine or alter.

A conveyance of or charge on an estate or interest in real property, containing a provision for the revocation, determination or alteration of the estate or interest, or any part thereof, at the will of the grantor, is void, as against subsequent purchasers and encumbrancers, from the grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by the grantor, by virtue of the power reserved or expressed in the prior conveyance or charge.

Where a power to revoke a conveyance of real property or the rents and profits thereof, and to reconvey the same, is given to any person, other than the grantor in such conveyance, and such person thereafter conveys the same real property, rents or profits to a purchaser or encumbrancer for a valuable consideration, such subsequent conveyance is valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

If a conveyance to a purchaser or encumbrancer, under this section, be made before the person making it is entitled to execute his power of revocation, it is nevertheless valid, from the time the power of revocation actually vests in such person, in the same manner, and to the same extent, as if then made.

§ 232. Disaffirmance of fraudulent act by executor and others.

An executor, administrator, receiver, assignee or other trustee, may, for the benefit of creditors, or of others interested in real property held in trust, disaffirm, treat as void and resist any

act done or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate or property; and a person who fraudulently receives, takes, or in any manner interferes with the real property of a deceased person, or an insolvent corporation, association, partnership, or individual, is liable to such executor, administrator, receiver or other trustee for the same, or the value thereof, and for all damages caused by such act to the trust estate.

A creditor of a deceased insolvent debtor, having a claim or demand exceeding one hundred dollars against such deceased, may, for the benefit of creditors or others interested in the real property of such deceased, disaffirm, treat as void, and resist any act done or conveyance, transfer or agreement made by such deceased in fraud of the rights of any creditor, including himself, and may maintain an action to set aside such act, conveyance, transfer or agreement, without having first obtained a judgment on such claim or demand; but the same, if disputed, may be established on the trial. The judgment in such action may provide for the sale of the premises or property involved, when a conveyance or transfer thereof is set aside, and that the proceeds thereof be brought into court or paid into the proper surrogate's court to be administered according to law.

§ 233. When remainderman may pay interest owed by life tenant.

Whenever real property held by any person for life is encumbered by mortgage or other lien, the interest on which should be paid by the life tenant, and such life tenant neglects or refuses to pay such interest, the remainderman may pay such interest, and recover the amount thereof, together with interest thereon from the time of such payment, of the life tenant.

§ 234. Powers of courts of equity not abridged.

Nothing contained in this article abridges the powers of courts of equity to compel the specific performance of agreements in cases of part performance.

ARTICLE VIII.

RECORDING INSTRUMENTS AFFECTING REAL PROPERTY.

Section 240. Definitions; effect of article.
241. Recording of conveyances.
242. By whom conveyance must be acknowledged or proved.
243. Recording of conveyances heretofore acknowledged or proved.
244. Recording executory contracts and powers of attorney.
245. Recording of letters patent.
246. Recording copies of instruments which are in secretary of state's office.
247. Certified copies may be recorded.
248. Acknowledgments and proofs within the state.
249. Acknowledgments and proofs in other states.
250. Acknowledgments and proofs in foreign countries.
251. Acknowledgments and proofs by married women.
252. Requisites of acknowledgments.
253. Proof by subscribing witness.
254. Compelling witnesses to testify.
255. Certificate of acknowledgment or proof.
256. When certificate to state time and place.
257. When certificate must be under seal.
258. Acknowledgment by corporation and form of certificate.
259. When county clerk's authentication necessary.
260. When other authentication necessary.
261. Contents of certificate of authentication.
262. Recording of conveyances acknowledged or proved without the state, when parties and certifying officer are dead.
263. Proof where witnesses are dead.
264. Recording books.
265. Indexes.
266. Order of recording.
267. Certificate to be recorded.
268. Time of recording.
269. Certain deeds deemed mortgages.
270. Recording discharge of mortgage.
271. Effect of recording assignment of mortgage.
272. Recording of conveyances made by treasurer of Connecticut.
273. Revocation to be recorded.
274. Penalty for using long forms of covenants.
275. Certain acts not affected.
276. Actions to have certain instruments cancelled of record.
277. Officers guilty of malfeasance liable for damages.

§ 240. Definitions; effect of article.

The term "real property" as used in this article, includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years. The term "purchaser," includes every person to whom any estate or interest in real property is conveyed for a valuable consideration, and every assignee of a mortgage, lease or other conditional estate. The term "conveyance," includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, and although the power be one of revocation only; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of such property. The term "recording officer," means the county clerk of the county, except in the counties of New York, Kings or Westchester, where it means the register of the county.

This article does not apply to leases for life or lives, or for years, heretofore made, of lands in either of the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware or Schenectady.

§ 241. Recording of conveyances.

A conveyance of real property, within the state, on being duly acknowledged by the person executing the same, or proved as required by this chapter, may be recorded in the office of the clerk of the county where such real property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser in good faith and for a valuable consideration, from the same vendor, his heirs or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded.

§ 242. By whom conveyance must be acknowledged or proved.

Except as otherwise provided by this article, such acknowledgment can be made only by the person who executed the conveyance, and such proof can be made only by some other person, who was a witness of its execution, and at the same time subscribed his name to the conveyance as a witness.

§ 243. Recording of conveyances heretofore acknowledged or proved.

A conveyance of real property, within the state, heretofore executed, and heretofore acknowledged or proved, and certified, so as to be entitled to be read in evidence, or recorded, under the laws in force at the time when so acknowledged or proved, but which has not been recorded is entitled to be

read in evidence, and recorded in the same manner, and with the like effect, as if this chapter had not been passed.

If heretofore executed, but not proved or acknowledged, it may be proved or acknowledged in the same manner as conveyances hereafter executed and with like effect.

§ 244. Recording executory contracts and powers of attorney.

An executory contract for the sale or purchase of real property, or an instrument containing a power to convey real property, as the agent or attorney for the owner of the property, acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, may be recorded by the recording officer of any county in which any of the real property to which it relates is situated.

§ 245. Recording of letters patent.

Letters patent, issued under the great seal of the state, granting real property, may be recorded in the county where such property is situated, in the same manner and with like effect, as a conveyance duly acknowledged or proved and certified so as to entitle it to be recorded.

§ 246. Recording copies of instruments which are in secretary of state's office.

A copy of an instrument affecting real property, within the state, recorded or filed in the office of the secretary of state, certified in the manner required to entitle the same to be read in evidence, may be recorded with such certificate, in the office of any recording officer of the state.

§ 247. Certified copies may be recorded.

A copy of a record, or of any recorded instrument, certified or authenticated so as to be entitled to be read in evidence, may be again recorded in any office where the original would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of a conveyance or mortgage affecting separate parcels of real property situated in different counties, or of the record of such conveyance or mortgage in one of such counties, certified or authenticated so as to be entitled to be read in evidence, may be recorded in any county in which any such parcel is situated, with the same effect as if the original instrument authenticated as required by section two hundred and fifty-nine of this chapter were so recorded.

§ 248. Acknowledgments and proofs within the state.

The acknowledgment or proof of a conveyance of real property within the state may be made at any place within the state, before a justice of the supreme court; or within the district

wherein such officer is authorized to perform official duties, before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, or the mayor or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds.

§ 249. Acknowledgments and proofs in other states.

The acknowledgment or proof of a conveyance of real property, within the state, may be made without the state, but within the United States, before either of the following officers acting within his jurisdiction, or of the court to which he belongs:

1. A judge of the supreme court, of the circuit court of appeals, of the circuit court, or of the district court of the United States.

2. A judge of the supreme, superior, or circuit court of a state.

3. A mayor of a city.

4. A commissioner appointed for the purpose by the governor of the state.

5. Any officer of a state, authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.

§ 250. Acknowledgments and proofs in foreign countries.

The acknowledgment and proof of a conveyance of real property within the state, may be made without the United States before either of the following officers:

1. An ambassador, a minister plenipotentiary, minister extraordinary, minister resident, or charge des affairs of the United States, residing and accredited within the country.

2. A consul-general, vice-consul or deputy consul, a consular or vice-consular agent, or a consul or commercial or vice-commercial agent of the United States, residing within the country.

3. A commissioner appointed for the purpose by the governor, and acting within his own jurisdiction.

4. A person specially authorized for that purpose by a commission, under the seal of the supreme court, issued to a reputable person, residing in or going to the country where the acknowledgment or proof is so to be taken.

5. If within the dominion of Canada, it may also be made before any judge of a court of record; or before any officer of such dominion authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.

6. If within the United Kingdom of Great Britain and Ireland or the dominions thereunto belonging, it may also be made before the mayor, provost or other chief magistrate of a city or town therein.

§ 251. Acknowledgments and proofs by married women.

The acknowledgment or proof of a conveyance of real property, within the state, or of any other written instrument, may be made by a married woman the same as if unmarried.

§ 252. Requisites of acknowledgments.

An acknowledgment must not be taken by any officer unless he knows or has satisfactory evidence, that the person making it is the person described in and who executed such instrument.

§ 253. Proof by subscribing witness.

Where the execution of a conveyance is proved by a subscribing witness, such witness must state his own place of residence, and that he knew the person described in and who executed the conveyance.

The proof must not be taken unless the officer is personally acquainted with such witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to the conveyance.

§ 254. Compelling witnesses to testify.

On the application of a grantee in a conveyance, his heir or personal representative, or of a person claiming under either of them, verified by the oath of the applicant, stating that a witness to the conveyance, residing in the county where the application is made, refuses to appear and testify concerning its execution, and that such conveyance can not be proved without his testimony, any officer authorized to take, within the state, acknowledgment or proof of conveyance of real property may issue a subpoena, requiring such witness to attend and testify before him concerning the execution of the conveyance. A person who, on being duly served with such a subpoena, without reasonable cause refuses or neglects to attend or refuses to answer under oath concerning the execution of such conveyance, forfeits to the person injured one hundred dollars; and may also be committed to prison by the officer who issued the subpoena, there to remain without bail, and without the liberties of the jail, until he answers under oath as required by this section.

§ 255. Certificate of acknowledgment or proof.

An officer taking the acknowledgment or proof of a conveyance must indorse thereupon or attach thereto, a certificate, signed by himself, stating all the matters required to be done, known or proved on the taking of such acknowledgment or proof; together with the name and substance of the testimony of each witness examined before him, and if a subscribing witness, his place of residence.

§ 256. When certificate to state time and place.

Where the acknowledgment or proof is taken by a commissioner appointed by the governor, for a city or county within the United States, and without the state, the certificate must also state the day on which, and the city or town or county in which the same was taken.

§ 257. When certificate must be under seal.

Where a certificate of acknowledgment or proof is made by a commissioner appointed by the governor, or by the mayor or other chief magistrate of a city or town without the United States, or by a minister, charge des affairs, consul-general, vice-consul or deputy consul, consular or vice-consular agent, or consul or commercial or vice-commercial agent, of the United States, it must be under his seal of office, or the seal of the consulate to which he is attached.

All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property, the certificates of which were made in the form required by the laws of this state, by a vice-consul, deputy-consul, consular agent, vice-consular agent, consul or commercial agent or vice-commercial agent of the United States prior to the fourteenth day of April, eighteen hundred and sixty-five, have been confirmed.

§ 258. Acknowledgment by corporation and form of certificate.

The acknowledgment of a conveyance or other instrument by a corporation, must be made by some officer thereof authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled:

State of New York, }
County of ....., } *ss*:

On the ..... day of ..... in the year ....., before me personally came ..... to me known, who, being by me duly sworn, did depose and say that he resided in .....; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

§ 259. When county clerk's authentication necessary.

A certificate of acknowledgment or proof, made within the state, by a commissioner of deeds, justice of the peace, or, except as otherwise provided by law, by a notary public, does not entitle the conveyance to be read in evidence or recorded, except within the county in which the officer resides at the time of making such certificate, unless authenticated by a certificate of the clerk of the same county. But this section does not apply to a conveyance executed by an agent for the Holland Land company, or of the Pulteney estate, lawfully authorized to convey real property.

§ 260. When other authentication necessary.

In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by the following officers, respectively:

1. Where the original certificate of acknowledgment or proof is made by a commissioner appointed by the governor, by the secretary of state.

2. Where made by a judge of a court of record in Canada, by the clerk of the court.

3. Where made by the officer of a state of the United States, or of the dominion of Canada authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, or the clerk, register, recorder or prothonotary of the county in which the officer making the original certificate resided, when the certificate was made, or by the clerk of any court of that county, having by law a seal.

§ 261. Contents of certificate of authentication.

An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate a certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that, at the time of taking the acknowledgment or proof, the officer taking it was duly authorized to take the same; that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office by such officer; and that he verily believes the signature to the original certificate is genuine; and if the original certificate is required to be under seal, he must also certify that he has compared the impression of the seal affixed thereto with the impression of the seal of the officer who took the acknowledgment or proof deposited in his office, and that he verily believes the impression of the seal upon the original certificate is genuine.

A clerk's certificate authenticating a certificate of acknowledgment or proof, taken before a judge of a court of record in Canada, must specify that there is such a court; that the judge before whom the acknowledgment of proof was taken, was, when it was taken, a judge thereof; that such court has a seal; that the officer authenticating is clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature is genuine.

§ 262. Recording of conveyances acknowledged or proved without the state, where parties and certifying officer are dead.

Where the execution of a conveyance of real property within this state is acknowledged or proved according to the laws of any other state of the United States, and a certificate of the acknowledgment or proof signed by the officer taking it is annexed to or indorsed upon the instrument, if such officer and the grantor or mortgagor be dead and the death of all of them be proved by affidavit, sworn to in such state before an officer authorized by its laws to administer an oath therein, the conveyance, with the affidavit or affidavits annexed thereto, on being authenticated as required by this section, may be read in evidence and recorded in the same manner, and with like effect, as if the conveyance was acknowledged or proved and certified as required by the laws of this state.

To entitle such conveyance and affidavits to be read in evidence, or recorded, a certificate of the clerk, recorder, register or prothonotary of the county in which the deceased officer resided, authenticating his signature, and also certifying that the conveyance is acknowledged or proved in all respects, as required by the laws of such state, must be annexed to the original certificate; and a like certificate of such clerk, recorder, register or prothonotary, authenticating the signature of the officer, before whom the affidavits proving the deaths were taken, must be annexed to such affidavits. The affidavits on being recorded, are presumptive evidence of the matters of fact, required to be stated therein.

§ 263. Proof where witnesses are dead.

Where the witnesses to a conveyance, authorized to be recorded, are dead, its execution may be proved before any officer authorized to take within the state the acknowledgment and proof of conveyances, other than a commissioner of deeds, a notary public, or a justice of the peace. The proof of the execution must be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses, or any one of them, and of the grantor, which evidence, with the name and residence of each witness examined, must be set

forth by the officer taking the same, in his certificate of proof. A conveyance so proved, and certified, may be recorded in the proper office, if the original conveyance be at the same time deposited in the same office, there to remain for the inspection of all persons desiring to examine the same. If the conveyance affects real property in two or more counties, a certified copy of the conveyance, with the proof and certificates, may be recorded in each of such counties. Such recording and deposit are constructive notice of the execution of such conveyance to all purchasers of the same real property, or any part thereof, from the same vendor, his heirs or assigns, subsequent to such recording, but do not entitle the conveyance or the record thereof, or a transcript of the record to be read in evidence.

§ 264. Recording books.

Different sets of books must be provided by the recording officer of each county, for the recording of deeds and mortgages; in one of which sets, he must record all conveyances and other instruments absolute in their terms delivered to him, pursuant to law, to be so recorded, which are not intended as mortgages, or securities in the nature of mortgages, and in the other set, such mortgages and securities delivered to him.

§ 265. Indexes.

Each recording officer must provide, at the expense of his county, proper books for making general indexes of instruments recorded in his office, and must form indexes therein, so as to afford correct and easy reference to the books of record in his office. There must be one set of indexes for mortgages or securities in the nature of mortgages, and another set for conveyances and other instruments not intended as such mortgages or securities. Each set must contain two lists in alphabetical order, one consisting of the names of the grantors or mortgagors, followed by the names of their grantees or mortgagees, and the other list consisting of the names of the grantees or mortgagees, followed by the names of their grantors or mortgagors, with proper blanks in each class of names, for subsequent entries, which entries must be made as instruments are delivered for record.

This section, so far as relates to the preparation of new indexes, shall not apply to a county where the recording officer now has general numerical indexes.

A recording officer who records a conveyance of real property, sold by virtue of an execution, or by a sheriff, referee or other person, pursuant to a judgment, the granting clause whereof states whose right, title or interest was sold, must insert in the proper index, under the head "grantors," the name of the officer

executing the conveyance, and of each person whose right, title or interest is so stated to have been sold.

§ 266. Order of recording.

Every instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him therefor, and is considered recorded from the time of such delivery.

§ 267. Certificate to be recorded.

The certificate of the acknowledgment or proof of the execution of an instrument, and the certificate authenticating the signature or seal of the officer so certifying, or both, if required, must be recorded together with the instrument so acknowledged or proved; otherwise neither the record of the instrument nor a transcript thereof can be read in evidence.

§ 268. Time of recording.

The recording officer must make an entry in the record, immediately after the copy of every instrument recorded by him, stating the hour, day, month and year, when it was recorded, and must indorse upon every such instrument a certificate, stating the time as aforesaid, when, and the book and page where, the same was recorded.

§ 269. Certain deeds deemed mortgages.

A deed conveying real property, which, by any other written instrument, appears to be intended only as a security in the nature of a mortgage, although an absolute conveyance in terms, must be considered a mortgage; and the person for whose benefit such deed is made, derives no advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being desired to have the effect only of a mortgage, or conditional deed, is also recorded therewith, and at the same time.

§ 270. Recording discharge of mortgage.

A mortgage, registered or recorded, must be discharged upon the record thereof, by the recording officer, when there is presented to him a certificate signed by the mortgagee, his personal representative or assignee, and acknowledged or proved, and certified, in like manner as to entitle a conveyance to be recorded, specifying that the mortgage has been paid, or otherwise satisfied and discharged. The certificate of discharge, and the certificates of its acknowledgment or proof, must be recorded; and a reference must be made to the book and page containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof.

§ 271. Effect of recording assignment of mortgage.

The recording of an assignment of a mortgage is not in itself, a notice of such assignment to a mortgagor, his heirs or personal representatives, so as to invalidate a payment made by either of them to the mortgagee.

§ 272. Recording of conveyances made by treasurer of Connecticut.

A conveyance of real property, executed at any time since the tenth day of March, eighteen hundred and twenty-five, by the treasurer of the state of Connecticut, acknowledged by him before the secretary of state of such state, and the acknowledgment of which is certified by such secretary of state under the seal of such state, in the manner required for the acknowledgment and certification of a conveyance within this state, may be recorded in the proper office within this state, without further proof thereof.

§ 273. Revocation to be recorded.

A power of attorney or other instrument, recorded pursuant to this article, is not deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

§ 274. Penalty for using long forms of covenants.

The recording officer of any county may charge for the recording of an instrument containing any of the covenants mentioned in sections two hundred and eighteen and two hundred and nineteen of this chapter, at large, instead of the short forms thereof, in said sections contained, the sum of five dollars in addition to the fees chargeable by law for such recording.

§ 275. Certain acts not affected.

Nothing contained in this article repeals or affects any act providing for recording and indexing instruments affecting real property in the city of New York, according to city blocks or other limited areas.

§ 276. Actions to have certain instruments cancelled of record.

An owner of real property or of any undivided part thereof or interest therein, may maintain an action to have any recorded instrument in writing relating to the same, other than those required by law to be recorded, declared void or invalid, or to have the same cancelled of record as to said real property, or his undivided part thereof or interest therein.

§ 277. Officers guilty of malfeasance liable for damages.

An officer authorized to take the acknowledgment or proof of a conveyance or other instrument, or to certify such proof or acknowledgment, or to record the same, who is guilty of malfeasance or fraudulent practice in the execution of any duty prescribed by law in relation thereto, is liable in damages to the person injured.

ARTICLE IX.

DESCENT OF REAL PROPERTY.

Section 280. Definitions and use of terms; effect of article.
281. General rule of descent.
282. Lineal descendants of equal degree.
283. Lineal descendants of unequal degree.
284. When father inherits.
286. When collateral relatives inherit; collateral relatives of equal degrees.
287. Brothers and sisters and their descendants.
288. Brothers and sisters of father and mother and their descendants.
289. Illegitimate children.
290. Relatives of the half-blood.
291. Cases not hereinbefore provided for.
292. Posthumous children and relatives.
293. Inheritance, sole or in common.
294. Alienism of ancestor.
295. Advancements.
296. How advancements adjusted.

§ 280. Definitions and use of terms; effect of article.

The term "real property" as used in this article, includes every estate, interest and right, legal and equitable in lands, tenements and hereditaments except such as are determined or extinguished by the death of an intestate seized or possessed thereof, or in any manner entitled thereto; leases for years, estates for the life of another person; and real property held in trust, not devised by the beneficiary. "Inheritance," means real property as herein defined, descended according to the provisions of this article; the expressions "where the inheritance shall have come to the intestate on the part of the father" or "mother," as the case may be, include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent.

When in this article a person is described as living, it means living at the time of the death of the intestate from whom the descent came; when he is described as having died, it means that he died before such intestate.

This article does not affect a limitation of an estate by deed or will, or tenancy by the curtesy or dower.

§ 281. General rule of descent.

The real property of a person who dies without devising the same shall descend:

1. To his lineal descendants.
2. To his father.
3. To his mother; and
4. To his collateral relatives,

as prescribed in the following sections of this article.

§ 282. Lineal descendants of equal degree.

If the intestate leave descendants in the direct line of lineal descent, all of equal degree of consanguinity to him, the inheritance shall descend to them in equal parts however remote from him the common degree of consanguinity may be.

§ 283. Lineal descendants of unequal degree.

If any of the descendants of such intestate be living, and any be dead, the inheritance shall descend to the living, and the descendants of the dead, so that each living descendant shall inherit such share as would have descended to him had all the descendants in the same degree of consanguinity who shall have died leaving issue been living; and so that issue of the descendants who shall have died shall respectively take the shares which their ancestor would have received.

§ 284. When father inherits.

If the intestate die without lawful descendants, and leave a father, the inheritance shall go to such father, unless the inheritance came to the intestate on the part of his mother, and she be living; if she be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; if there be no such brothers or sisters or their descendants living, such inheritance shall descend to the father in fee.

§ 285. When mother inherits.

If the intestate die without descendants and leave no father, or leave a father not entitled to take the inheritance under the last section, and leave a mother, and a brother or sister, or the descendant of a brother or sister, the inheritance shall descend to the mother for life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided. If the intestate in such case leave no brother or sister or descendant thereof, the inheritance shall descend to the mother in fee.

§ 286. When collateral relatives inherit; collateral relatives of equal degrees.

If there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from him the common degree of consanguinity may be.

§ 287. Brothers and sisters and their descendants.

If all the brothers and sisters of the intestate be living, the inheritance shall descend to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants, in whatever degree, of those dead; so that each living brother or sister shall inherit such share as would have descended to him or her if all the brothers and sisters of the intestate who shall have died, leaving issue, had been living, and so that such descendants in whatever degree shall inherit the share which their parent would have received if living; and the same rule shall prevail as to all direct lineal descendants of every brother and sister of the intestate whenever such descendants are of unequal degrees.

§ 288. Brothers and sisters of father and mother and their descendants.

If there be no heir entitled to take, under either of the preceding sections, the inheritance, if it shall have come to the intestate on the part of his father, shall descend:

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living:

2. If any be living, and any shall have died, leaving issue, to such brothers and sisters as shall be living and to the descendants of such as shall have died.

3. If all such brothers and sisters shall have died, to their descendants.

4. If there be no such brothers or sisters of such father, nor any descendants of such brothers or sisters, to the brothers and sisters of the mother of the intestate, and to the descendants of such as shall have died, or if all have died, to their descendants.

But, if the inheritance shall have come to the intestate on the part of his mother, it shall descend to her brothers and sisters and their descendants; and if there be none, to the brothers and sisters of the father and their descendants, in the manner aforesaid.

If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to the brothers and sisters both of the father and mother of the intestate, and their descendants in the same manner.

In all cases mentioned in this section the inheritance shall descend to the brothers and sisters of the intestate's father or mother, as the case may be, or to their descendants in like manner as if they had been the brothers and sisters of the intestate.

§ 289. Illegitimate children.

If an intestate who shall have been illegitimate die without lawful issue or illegitimate issue entitled to take, under this section, the inheritance shall descend to his mother; if she be dead, to his relatives on her part, as if he had been legitimate.

If a woman die without lawful issue, leaving an illegitimate child, the inheritance shall descend to him as if he were legitimate.

In any other case illegitimate children or relatives shall not inherit.

§ 290. Relatives of the half-blood.

Relatives of the half-blood and their descendants, shall inherit equally with those of the whole blood and their descendants, in the same degree, unless the inheritance came to the intestate by descent, devise or gift from an ancestor; in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

§ 291. Cases not hereinbefore provided for.

In all cases not provided for by the preceding sections of this article, the inheritance shall descend according to the course of the common law.

§ 292. Posthumous children and relatives.

A descendant or a relative of the intestate begotten before his death, but born thereafter, shall inherit in the same manner as if he had been born in the lifetime of the intestate and had survived him.

§ 293. Inheritance, sole or in common.

When there is but one person entitled to inherit, he shall take and hold the inheritance solely; when an inheritance or a share of an inheritance descends to several persons they shall take as tenants in common, in proportion to their respective rights.

§ 294. Alienism of ancestor.

A person capable of inheriting under the provisions of this article, shall not be precluded from such inheritance by reason of the alienism of an ancestor.

§ 295. Advancements.

If a child of an intestate shall have been advanced by him, by settlement or portion, real or personal property, the value thereof must be reckoned for the purposes of descent and distribution as part of the real and personal property of the intestate descendible to his heirs and to be distributed to his next of kin; and if such advancement be equal to or greater than the amount of the share which such child would be entitled to receive of the estate of the deceased, such child and his descendants shall not share in the estate of the intestate; but if it be less than such share, such child and his descendants shall receive so much, only, of the personal property, and inherit so much only, of the real property, of the intestate, as shall be sufficient to make all the shares of all the children in the whole property, including the advancement, equal.

The value of any real or personal property so advanced, shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise it must be estimated according to the worth of the property when given.

Maintaining or educating a child, or giving him money without a view to a portion or settlement in life is not an advancement.

An estate or interest given by a parent to a descendant by virtue of a beneficial power, or of a power in trust, with a right of selection, is an advancement.

§ 296. How advancements adjusted.

When an advancement to be adjusted consisted of real property, the adjustment must be made out of the real property descendible to the heirs. When it consisted of personal property, the adjustment must be made out of the surplus of the personal property to be distributed to the next of kin. If either species of property is insufficient to enable the adjustment to be fully made, the deficiency must be adjusted out of the other.

ARTICLE X.

LAWS REPEALED; WHEN TO TAKE EFFECT.

Section 300. Laws repealed.

301. When to take effect.

§ 300. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 301. When to take effect.

This chapter shall take effect on October 1, 1896.

SCHEDULE OF LAWS REPEALED.

Revised Statutes, part II., chapters 1, 2, 3	All, except Secs. 5, 6, 7 of tit. I. of ch. 1, and Sec. 63, tit. II., ch. 1.
Revised Statutes, part II., chapter 7, title I	All.

Laws of—	Chapter.	Sections.
1798	72	All.
1802	49	All.
1804	109	26.
1805	25	All.
1807	123	2.
1808	175	All.
1819	25	All.
1829	222	All.
1830	171	All.
1834	273	All.
1835	275	All.
1839	295	5.
1843	87	All.
1843	199	All.
1843	210	5.
1845	109	All.
1845	110	All.
1845	115	All.
1848	195	All.
1855	547	All.
1857	576	All.
1858	259	All.
1860	322	All.
1860	345	All.
1860	396	All.
1863	246	All.
1865	421	All.
1868	513	All.
1870	208	All.
1872	120	All.
1872	141	All.
1872	358	All.
1874	261	All.
1875	38	All.
1875	336	All.
1875	545	All.
1877	111	All.
1879	249	All.
1880	300	All.
1880	115	All.
1880	530	All.
1882	275	All.
1883	80	All.
1884	26	All.
1886	257	All.
1888	246	All.
1889	42	All.
1890	61	All.
1890	475	All.
1891	100	All.
1891	172	All.
1891	209	All.
1892	208	All.
1892	616	All.
1893	123	All.
1893	182	All.
1893	207	All.
1893	599	All.
1894	315	All.
1894	729	All.
1895	525	All.
1895	886	All.

ANALYTICAL INDEX

TO

THE REAL PROPERTY LAW

OF

NEW YORK.

TAKING EFFECT IST OCTOBER, 1896.

BY

GEO. W. VAN SICLEN.

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Written notice of not less than 30 days to terminate tenancy at will or by sufferance	198	92
Years, estates for, *are chattels real*	23	63
tenant holding over at expiration after 30 days' notice to quit liable to double rent and damages. No equitable defence to this	200	93
Years, tenant for, conveying greater estate than he possesses does not work forfeiture, but passes all he has	212	96